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1 P R O C E E D I N G S

2 THE COURT: Would the clerk please call the case.

3 COURTROOM CLERK: This is civil matter number
4 20-11889, *Dr. Shiva Ayyadurai v. William Francis Galvin*.

5 THE COURT: Good morning. Would the plaintiff and
6 counsel for the defendant please identify themselves for the
7 record.

8 MR. AYYADURAI: Yes, good morning, Your Honor. This
9 is Dr. Shiva Ayyadurai, also known as Dr. Shiva. I'm the
10:26 10 plaintiff.

11 THE COURT: Thank you.

12 MR. HORNSTINE: Good morning, Your Honor. Assistant
13 Attorney General Adam Hornstine on behalf of the defendant.

14 MS. STERMAN: Good morning, Your Honor. Assistant
15 Attorney General Anne Sterman, also on behalf of the defendant.

16 THE COURT: And what bureau of the Attorney General's
17 Office are you in?

18 MR. HORNSTINE: We are both from the government
19 bureau, Your Honor.

10:26 20 THE COURT: The same bureau that represented the
21 defendants in the recent *Baptiste* case concerning the eviction
22 moratorium?

23 MR. HORNSTINE: I believe so, yes, Your Honor.

24 THE COURT: Is Ms. Greaney and Mr. Cray in the
25 government bureau?

1 MR. HORNSTINE: Yes, Your Honor.

2 THE COURT: And is Ms. O'Malley on the videoconference
3 as ordered?

4 MR. HORNSTINE: Yes, Your Honor. We have two
5 representatives from the Secretary's Office here today. Debra
6 O'Malley and Michelle Tassinari.

7 THE COURT: Okay. Thank you.

8 Okay. I apologize for starting now almost 30 minutes
9 late, but this is a motion for a temporary restraining order.
10:27 10 There's particular urgency to it because it relates to the
11 election on November 3, several days from now. And it is my
12 goal to decide this motion today, so I wanted to try to
13 organize my thoughts and questions. And like many things, it
14 took me longer than I hoped.

15 I think at the outset it would be valuable to get some
16 clarification on the relief that's being sought because the
17 defendant's memo in opposition to the temporary restraining
18 order characterizes it differently than I understood it from
19 reading the plaintiff's memorandum.

10:28 20 Dr. Shiva, what relief are you seeking immediately and
21 eventually? And more specifically, is it -- well, what relief
22 are you seeking?

23 MR. AYYADURAI: Your Honor, I'm seeking relief to
24 enjoin Secretary Galvin from continuing to contact Twitter to
25 have me banned. And I wanted to lay out a couple of points

1 here.

2 THE COURT: Well, right now I just -- excuse me.
3 Everybody except the people who intend to speak for the parties
4 should be on mute. So say that again, please, Doctor.

5 MR. AYYADURAI: Yes, Your Honor. I'm sorry. My goal,
6 the intent of the restraining order is to enjoin Secretary
7 Galvin from contacting Twitter between now and the end of the
8 election, which is November 4th, to have them have me delete --
9 have them force to have me delete tweets and to ban me.

10:29 10 THE COURT: Okay. And this is what prompted the
11 question. That's the way the defendant characterized the
12 relief you're seeking. And the question I'm actually asking is
13 a little broader. Are you seeking a permanent ban -- a
14 permanent injunction against the Secretary of State contacting
15 Twitter essentially about you, or are you just seeking an
16 injunction that would prohibit them from doing that until after
17 the election?

18 MR. AYYADURAI: Until after the election, which is
19 November 4th, yes. It's a temporary restraining order between
10:30 20 now and that period. I'm not seeking something permanent
21 against them.

22 THE COURT: Okay. But in the case, as opposed to the
23 motion, are you seeking a permanent ban? Because whether or
24 not -- well, are you seeking a permanent ban or essentially one
25 way or another will this case be over next week?

1 MR. AYYADURAI: Well, there is the injunction, Your
2 Honor, which is for injunctive relief, which I'm coming here.
3 The larger case is for the irreparable harm I've suffered
4 during the time that I was banned by the Secretary of State's
5 actions.

6 THE COURT: Well, there may be a bit of a problem with
7 you representing yourself. I understand you're an MIT
8 professor, but do you have any legal training?

9 MR. AYYADURAI: No, Your Honor, I do not. I'm
10:31 10 representing myself pro se, so I look to your guidance.

11 THE COURT: Well, I'm not permitted to be your lawyer,
12 but I'm trying at this point to understand the questions.

13 Here is the point. One, as I said in my order of I
14 think October 20, the Eleventh Amendment to the Constitution of
15 the Supreme Court has said, "bars suits for money damages
16 against state officials in Federal Court." If you wanted money
17 damages, you might or might not be able to maintain a case in
18 Massachusetts courts but not in United States courts.

19 So I could make that ruling formal. But are you
10:32 20 asking -- your complaint asks for money damages, I think \$1.2
21 billion. Are you still asking for money damages in the overall
22 case?

23 MR. AYYADURAI: Your Honor, right now I believe we're
24 here for the temporary restraining order.

25 THE COURT: But actually, you're here to answer my

1 questions.

2 MR. AYYADURAI: Oh, okay.

3 THE COURT: That won't get decided today. We can put
4 it aside. But I can tell you that I would be compelled to
5 decide against you in saying that you can't get money damages
6 in this case.

7 The question that will have importance after I rule on
8 the temporary restraining order is whether -- well, if I grant
9 the temporary restraining order, it can only run for 14 days,
10:33 10 and then in certain circumstances it may be extended. But it
11 can't run for months or years while the case is being fully
12 developed and proceeds to trial.

13 So that's why I asked the question of whether, in this
14 case, not in the motion for temporary restraining order, the
15 overall case, you're seeking a permanent injunction which would
16 usually be proceeded by an effort to get a preliminary
17 injunction that would prohibit the Secretary of State from
18 communicating about you with Twitter beyond next week.

19 MR. AYYADURAI: Are you asking me a question, Your
10:34 20 Honor?

21 THE COURT: Yes. I'm trying to understand what the
22 case is about.

23 MR. AYYADURAI: Right. So Your Honor, my focus has
24 been given what's going on between now and November 4th for the
25 temporary restraining order. So for me, that is really the

1 focus right now.

2 Now, there's the larger case, which is about, you
3 know, the irreparable harm that was done. I had not sought
4 beyond that, beyond the temporary restraining order to go get,
5 you know, permanent injunction for the Secretary of State ever
6 contacting Twitter again in the future.

7 THE COURT: All right. Because this has some
8 implications. Okay. That's helpful. And we will go I guess
9 one step at a time.

10:35 10 So this is a motion for a temporary restraining order.
11 Generally the parties recognize the standards. They're the
12 same as the standards that apply for a preliminary injunction.
13 The plaintiff has to prove that he's entitled to a temporary
14 restraining order. There are generally four elements. The
15 most important, the essential element is the plaintiff has to
16 show a reasonable likelihood of succeeding on the merits of his
17 claim. Then if he does that, he also has to show essentially
18 that there's an imminent threat of irreparable harm if the
19 request for the temporary restraining order is denied.

10:36 20 And the defendant doesn't address this at all in its
21 memoranda. Perhaps that's because with regard to, when the
22 claim is a violation of the First Amendment, the Supreme Court
23 has found that a violation of the First Amendment even for a
24 minimal period of time unquestionably constitutes irreparable
25 harm or injury. That's *Elrod v. Burns*, 427 U.S. 347, 373.

1 Then I would be required to consider the balance of
2 the hardships and whether an injunction would serve the public
3 interest. But in addition, a temporary restraining order is an
4 equitable remedy, so I could consider if there was any
5 inequitable conduct in deciding whether to grant a remedy even
6 if the four conventional factors weighed in favor of granting
7 it.

8 So that's the framework I intend to employ in deciding
9 this issue. But do the parties want to be heard on whether
10:38 10 those are the right questions?

11 MR. HORNSTINE: No, Your Honor.

12 MR. AYYADURAI: Same here, Judge.

13 THE COURT: Okay. All right. Well, in a footnote to
14 the defendant's memorandum, the question is raised as to
15 whether service has been properly accomplished and whether the
16 court even has jurisdiction to decide the temporary restraining
17 order. That argument was not developed in the memorandum. As
18 the First Circuit, District Courts in Massachusetts, including
19 district judges in Massachusetts, including me, have found,
10:39 20 arguments raised in a perfunctory way are not -- are usually
21 deemed waived. But this has had to go very fast.

22 Is it the defendant's position that the court doesn't
23 have jurisdiction to grant a temporary restraining order?

24 MR. HORNSTINE: Yes, Your Honor, both because of the
25 Eleventh Amendment issue which is briefed and also the mootness

1 issue. And plaintiff's recitation today as to what the precise
2 nature of the equitable relief he seeks may also create an
3 additional mootness problem, which is -- and perhaps the court
4 can clarify this through questions to the plaintiff. It
5 appears as if he may be under a new Twitter suspension. I
6 don't know how long that Twitter suspension would be lasting.
7 I may well be mistaken in this regard.

8 THE COURT: Let me pause you for a moment.

9 MR. HORNSTINE: I apologize.

10:40 10 THE COURT: You don't have to apologize for this. My
11 question may have been too general. Do you argue that the
12 court lacks jurisdiction to grant a temporary restraining order
13 because service hasn't been accomplished in the way required by
14 Rule 4?

15 MR. HORNSTINE: I apologize, Your Honor. I was
16 jumping ahead. The defendant's position is that the Secretary
17 has not been properly served in this case. But inasmuch as the
18 court has ordered the defendant to appear and counsel to
19 appear, it has done so to address the motion. My client has
10:41 20 not authorized me to accept service, although I had discussed
21 the matter briefly as indicated in our affidavit that was filed
22 yesterday.

23 So to the extent the court wants to talk about the
24 merits of the motion today, we can certainly do so and are
25 prepared to do so, but the defendant wants to make clear that

1 service of a summons within the meaning of Rule 4 has not yet
2 been accomplished.

3 THE COURT: All right. And we will go to the merits,
4 and I may expand on this when I decide the motion. But for the
5 purposes of a temporary restraining order at least, but not
6 necessarily for a preliminary injunction, I believe that
7 service of process does not have to be properly accomplished.

8 Rule 65(b)(1), for example, allows a temporary
9 restraining order to be issued without any notice to the
10:42 10 defendant in limited circumstances, which implies that service
11 doesn't have to be accomplished properly for the court to have
12 the authority to grant a temporary restraining order, given the
13 urgent nature of such motions. And there are a number of cases
14 to that effect I might cite later.

15 So I will hear the parties on the merits. But Dr.
16 Shiva, you need to understand that if this case is going to go
17 on beyond the motion for temporary restraining order, you're
18 going to have to accomplish service in a way that is consistent
19 with Rule 4(j), which I pointed -- Federal Rule of Civil
10:43 20 Procedure 4(j), which I pointed out in my order to you. Do you
21 understand that?

22 MR. AYYADURAI: Yes. Thank you, Your Honor. I
23 understand.

24 THE COURT: All right. So I would like to hear the
25 plaintiff's argument, and I have a number of questions and a

1 number of questions for the defendant.

2 But as I understand it from the submissions, you
3 allege that Twitter ordered you to remove seven tweets and
4 suspended your account for 14 days, I thought it was several
5 weeks ago. I don't know if the suspension is continuing. And
6 this is something that the defendant is honing in on.
7 Defendant says the harm is not continuing, so either the case
8 is moot, there's no real controversy, or even that I lack
9 jurisdiction because of that.

10:44 10 So I'm curious to know, interested in knowing what
11 happened. Is Twitter doing something to restrict your speech
12 on Twitter now? Did they give you any explanation? And
13 ordinarily I might ask you whether you swear some of these
14 things are true if you tell me something relevant. But did
15 they give you any explanation for why they were removing your
16 tweets or suspending your account? Did they offer any
17 alternatives?

18 Then I directed you -- and you don't have to start
19 with this, but to me -- and the government didn't raise the
10:45 20 point, I think missed the major case of significance in this, a
21 very important case, the First Amendment only bars the
22 government from restricting freedom of speech.

23 So it appears that Twitter ordinarily is a private
24 entity. Unless there's a sufficient connection between what
25 the government did and what Twitter did, there can't be a First

1 Amendment violation. And *Blum* is one case. There are a number
2 of other cases that discuss what is a sufficiently close
3 connection.

4 So someplace in your presentation you want to tell me
5 what you allege and what you're prepared to testify under oath
6 the Secretary of State did, you know, what Twitter did and what
7 if anything Twitter told you about why they did what they did.
8 Go ahead.

9 MR. AYYADURAI: Sure. Thank you, Your Honor.

10:46 10 Your Honor, I believe we're here because I claim that
11 the Secretary of State is responsible, they're the primary
12 mover for Twitter's action. And I want to thank Your Honor for
13 drawing our attention to *Blum v. Yaretsky*. *Blum v. Yaretsky* is
14 most appropriate because the plaintiff -- there the plaintiff
15 sued the nursing home because he asserted that the nursing
16 home's action was state action.

17 In my case I have overwhelming evidence that Twitter's
18 action was directly Secretary Galvin's action, therefore
19 Secretary Galvin is the correct person to sue. I'm not suing
10:47 20 Twitter.

21 In my case I've relied exactly on the same court
22 ruling, and I'm able to show that I can meet the standard that
23 the government encouraged the private actor to act. Meaning
24 Twitter was a proxy for Secretary Galvin. Twitter's action was
25 the government's action. So the action of the private actor

1 became the action of the government. Here, Your Honor, I would
2 wish to provide you some background of why Twitter acted as
3 Secretary Galvin's proxy.

4 THE COURT: And what you're about to tell me -- here,
5 I have to decide the case based on evidence. So if we weren't
6 going so fast, I would tell you you've got to put this in an
7 affidavit and be prepared to be cross-examined on it. But do
8 you swear that what you're about to tell me is the truth, the
9 whole truth and nothing but the truth so help you God, as you
10:48 10 understand it?

11 MR. AYYADURAI: Yes, Your Honor, as I understand it,
12 what I'm about to tell you is the truth and nothing but the
13 truth, swear to God.

14 THE COURT: Go ahead.

15 MR. AYYADURAI: Okay. To give you some background,
16 Your Honor, for four years now all social media companies have
17 been under tremendous pressure to act against, quote-unquote,
18 "election misinformation." This pressure has been unrelenting
19 from all sides, congress, states, politicians, Department of
10:48 20 Justice, the public and the press and public opinion. In fact,
21 it never let up after the previous 2016 election.

22 In fact, just this week Massachusetts U.S. Senator
23 Markey demanded in the senate that Facebook and other social
24 media companies actively shut down voices that he deemed to be
25 pedaling, quote-unquote, "election misinformation." Twitter, a

1 publicly traded corporation, is not immune from these strong
2 pressures. And here in this case it received a strong
3 complaint from Secretary Galvin that claimed my tweets were,
4 quote-unquote, "election misinformation."

5 THE COURT: Do you know what the words of the
6 communication were from Secretary Galvin's office to Twitter?
7 Because I didn't --

8 MR. AYYADURAI: As I know, Your Honor, there was a --
9 when I tweeted out the tweets, which were banned, there was an
10:49 10 organization, there was a fact-checking organization which
11 contacted Ms. O'Malley, and that organization reported that she
12 had told them that I was putting out election misinformation.
13 And that's in one of the footnotes. And that is a fact that
14 his office has confirmed by affidavit.

15 In fact, in the current climate one can imagine fewer
16 dog whistles more potent than the words "election
17 misinformation," which is what they used. It was inevitable
18 and entirely predictable that Twitter would not ignore an
19 official complaint from the Massachusetts Secretary of State
10:50 20 that my Twitter feed spread, quote-unquote, "election
21 misinformation." In my view, the evidence is overwhelming.

22 THE COURT: Well, why is it -- I mean, if this case
23 goes on beyond the temporary restraining order, this is
24 information that's going to be highly relevant. In other
25 words, does Twitter always sanction a speaker if a government

1 agency says that the speaker is disseminating false information
2 about an election, and is that known, what Twitter's practice
3 is?

4 MR. AYYADURAI: Well, I think the -- what I'm
5 asserting here, Your Honor, given the conditions, because of
6 the immense pressure that Twitter is under, and this has been
7 going on since 2016, on this area of election misinformation,
8 especially the gravitas of the Office of the Secretary of State
9 putting that forward, sending that to them is going to have
10:51 10 immense pressure on a publicly traded company.

11 THE COURT: Do you know how -- and Ms. O'Malley is on
12 the call, and I intend to ask her these questions. Do you know
13 how she communicated with Twitter?

14 MR. AYYADURAI: I believe per her affidavit she
15 communicated to them electronically.

16 THE COURT: But I wonder whether there's an email or a
17 post on a website.

18 MR. AYYADURAI: Twitter has a form, Your Honor, where
19 you submit your complaint electronically to them. I'm not
10:52 20 aware of her communicating through email but electronically
21 through the means that they provide.

22 THE COURT: And do you know whether or not she
23 identified herself as somebody who works for the Secretary of
24 State in Massachusetts?

25 MR. AYYADURAI: I believe she did, Your Honor.

1 THE COURT: Okay. She'll know.

2 MR. AYYADURAI: Yes. So to give you background, I've
3 been on Twitter for close to ten years. And in my view the
4 evidence is overwhelming because I've been on Twitter for ten
5 years, and I've tweeted many controversial opinions on hot
6 button issues like election fraud, the pandemic mandatory mask
7 rules, mandatory vaccinations, and Twitter has allowed me to
8 exercise my freedom of expression without hindrance in those
9 ten years.

10:52 10 In fact, through most of September 2020, I did tweet
11 about election fraud in Massachusetts, between September 1
12 through September 25 in fact. And Twitter had no objection.
13 All of those tweets are still public. In fact, my specific
14 tweet on Massachusetts destroying ballot images is still
15 public. It is vital to note that this tweet went viral all
16 over the world, and Twitter took no action to delete it or to
17 ban me for posting that tweet.

18 So which tweet did Twitter force me to delete for the
19 first time in ten years and then resulting in my banning for
10:53 20 multiple weeks? There were four tweets that relate to
21 screenshots of an email conversation with Counsel Tassinari in
22 Secretary Galvin's office which documented that the Secretary's
23 Office claimed reliance on some as yet unspecified state law
24 justifying their office deleting ballot images that were
25 generated during a federal election.

1 The emails confirmed that the ballot images had indeed
2 been destroyed in violation of federal law. This is why
3 Secretary Galvin moved to shut me down on Twitter and have
4 those tweets deleted.

5 As long as I made allegations and I was regarded in
6 their mind as, quote-unquote, "some loose cannon," Secretary
7 Galvin was least bothered about, quote-unquote, "election
8 misinformation" from my Twitter account. It was the
9 documentary evidence in violation of federal law in those
10:54 10 emails that is the motive for Secretary Galvin's action. This
11 is a central point of my argument, Your Honor.

12 Now, Your Honor, I referred to the main sentence in
13 *Blum v. Yaretsky* that you kindly quoted in your order which
14 says, quote, "A state normally can be held for a private
15 decision only when it has exercised coercive power or has
16 provided such significant encouragement that the choice must in
17 law be deemed to be that of the state," end quote.

18 In my case here the evidence is clear that Twitter's
19 actions were the Secretary's actions. The specific deleted
10:54 20 tweets are intimately linked to violation of federal law by
21 Secretary Galvin and nothing else. Election misinformation --

22 THE COURT: Let me pause you for a moment.

23 MR. AYYADURAI: Yes, Your Honor.

24 THE COURT: As I pointed out to you, the fact that
25 you're representing yourself means I have to liberally construe

1 your allegations but not relieve you of the obligations of the
2 rules. So where in the record -- perhaps it's in the verified
3 complaint -- do I find these four tweets?

4 MR. AYYADURAI: I do not believe they're in the
5 verified complaint, Your Honor.

6 THE COURT: Are they in evidence before me? Have they
7 been submitted to the court?

8 MR. AYYADURAI: I'm sorry. I think they are -- I'm
9 sorry. The actual tweets aren't there, but the description of
10:55 10 those tweets are there in the verified complaint. Where I
11 shared that, I shared the email conversation between myself and
12 Counsel Tassinari.

13 THE COURT: Hold on a second.

14 MR. AYYADURAI: Yes, there are four email screenshots.

15 THE COURT: I know, I've seen them in the materials
16 I've been reading. I don't see it in the complaint. Is at
17 least one of them in the defendant's memo, Mr. Hornstine?

18 MR. HORNSTINE: That's correct, Your Honor. If the
19 court wishes, there is a screenshot of not four tweets but a
10:57 20 singular tweet that the Secretary reported to Twitter. It is
21 contained in I think both of the witnesses' affidavits. I'm
22 double-checking to see if it's in our memorandum as well.

23 THE COURT: It doesn't matter. I've got the
24 affidavit. Thank you. Let me get it.

25 MR. HORNSTINE: If you're looking at Ms. Tassinari's

1 affidavit, it appears in paragraph 8. If you're looking at
2 Ms. O'Malley's, it is paragraph 3.

3 THE COURT: So this is paragraph 8 of docket 15-2.
4 Paragraph 8 says, Ms. Tassinari's affidavit, "On September 24,
5 2020, Ayyadurai tweeted this false claim," then it has a
6 screenshot of a tweet. "Breaking: Massachusetts destroys over
7 one million ballots in U.S. senate primary race, committing
8 #ElectionFraud. Mass. elections attorney confirms to
9 #Shiva4Senate ballot images - used for counting votes - that
10:58 10 must be saved by federal law for 22 months are nowhere to be
11 found!"

12 So the evidence I have, Doctor, is that -- and you'll
13 get a chance to test this if the case goes on -- that there was
14 a complaint about this tweet. I think that's the defendant's
15 position. But anyway, why don't you go ahead. So you say
16 there were four?

17 MR. AYYADURAI: Yes, Your Honor. The defendant has
18 left out -- there are a series of four emails, and she has left
19 out -- the defendant, Counsel Tassinari, has left out the
10:59 20 fourth email where I write back to her saying, you know, please
21 show me the statute again, and you've actually violated federal
22 law. We have them. We can submit them. But there were four
23 emails.

24 Those four screenshots were said in what's called a
25 threaded tweet, and it is that tweet that Twitter had me delete

1 and resulted in my banning. In fact, what's interesting is
2 they did not --

3 THE COURT: Here, stop for just a moment.

4 MR. AYYADURAI: Sure.

5 THE COURT: And I don't tweet, so you should not
6 assume that I understand what everybody else understands. I
7 have an account and I get some tweets. I don't often read
8 them, and I've never sent a tweet.

9 What did you say, "threaded tweets"?

11:00 10 MR. AYYADURAI: Yes. Basically it's a tweet where you
11 can have multiple tweets together. So if you're talking about
12 a subject, you can connect them. So it's essentially four
13 tweets, but they're under -- they're one after the other.

14 THE COURT: So it's like a chain of emails?

15 MR. AYYADURAI: Yes, exactly, like a chain of emails,
16 but they're considered four independent tweets interconnected.

17 THE COURT: And what is the fourth one?

18 MR. AYYADURAI: The fourth tweet is the one that I
19 sent back. So the first tweet that Ms. Tassinari sent me was,
11:00 20 We are prohibited from saving ballot images. That's
21 paraphrasing it. I wrote back, What is the Massachusetts
22 statute or law? Then she writes back, if you see the one that
23 she gave, that, Again, we don't have to save -- ballot images
24 are not stored. We only save the paper.

25 And then the fourth email I sent back to them is, You

1 violated federal law, that you have to save these ballot
2 images, and that tweet is missing. Those four screenshots I
3 shared on Twitter.

4 Those were the screenshots, those were the four tweets
5 that Twitter had me delete. They did not have me delete the
6 one that you're seeing right there. That's what's important.
7 That was sent on the 24th, 25th I believe. It was only these
8 tweets where I'm exposing the Secretary of State violating
9 federal law. That's what Secretary Galvin had deleted, and the
11:01 10 specific deleted tweets are intimately linked to violation of
11 federal law by the Secretary of State.

12 And election misinformation in my view is a dog
13 whistle that the Secretary used to significantly induce Twitter
14 in the present political climate to do his bidding. And this
15 is why, unlike *Blum*, I correctly identified Secretary Galvin as
16 a sole defendant. Because for Secretary Galvin to deny all
17 responsibility for a sequence of events that have taken place
18 is consciously dishonest.

19 He knew full well that as the elections officer for
11:02 20 the State of Massachusetts, while we are in a heated election
21 cycle, his complaint would carry enormous weight, and it did
22 carry enormous weight. Twitter's response was immediate. They
23 forced me to delete those four tweets of that email
24 conversation with Ms. Tassinari.

25 They didn't force me to delete that other tweet. And

1 they banned me for weeks in the midst of my campaign and forced
2 me to delete any tweets specifically referring to that email
3 conversation.

4 So Secretary Galvin's attempt to deny responsibility
5 also violates U.S. Supreme Court's doctrine of cat's paw
6 liability, which I understand was accepted by the Supreme Court
7 in *Staub v. Proctor*, where one person can be responsible for
8 another person's action.

9 Now, the defendant may assert that cat's paw is
10 applied mainly in the employment context, but it perfectly
11 describes this action here. Secretary of State Galvin induced
12 Twitter using the infamatur of his office which neither affiant
13 denies to be his cat's paw.

14 Secretary Galvin is consciously making a cat's paw
15 defense by essentially saying, It wasn't me; it was Twitter
16 that blocked the candidate in the midst of his campaign.
17 Twitter had never and would never have suspended plaintiff for
18 a Secretary of State making an official complaint. In fact,
19 Twitter has no interest in blocking public access to one
20 particular email conversation.

21 Finally, the official spokesperson and legal counsel
22 represent the official view of the office of -- meaning
23 Secretary Galvin was actively involved in that decision, and as
24 the saying goes, the buck stops at his desk. So that's one of
25 the first points I want to make in my argument.

1 The second point I would like to address is Secretary
2 Galvin has claimed he engaged in government speech when he
3 complained to Twitter. In the United States, government speech
4 does not trump political speech during an election campaign.

5 Both affiants swear that they indeed did inform
6 Twitter about plaintiff's tweets were inaccurate, even though
7 the Supreme Judicial Court has ruled that a candidate's speech
8 is allowed to be inaccurate. Whether they are accurate or
9 inaccurate is irrelevant. Punishing candidates for inaccurate
11:04 10 claims during a campaign is what is unconstitutional.

11 As I understand, I'm not a lawyer, but from my
12 reading, there's no difference between the defendant's action
13 and charging a candidate under the law that the Supreme
14 Judicial Court invalidated in *Commonwealth v. Melissa Lucas*.

15 THE COURT: Well, stop. Your claims, as I've
16 understood the complaint, are under the United States
17 Constitution, not under the Massachusetts Constitution. So
18 this needs to be analyzed as a matter of First Amendment
19 jurisprudence.

11:05 20 But if you're reasonably likely to succeed on the *Blum*
21 point that Twitter's action and the facts likely to be proven
22 in this case were state action, then your speech was political
23 speech. It's protected by the First Amendment and -- I believe
24 the defendants will address this -- subject to strict scrutiny.
25 The government would have to show it had a compelling interest

1 and that this was narrowly tailored, basically the only way to
2 satisfy that interest. That's why I pointed to *Blum*, there's a
3 line of cases deriving from *Blum*, because I do think that's the
4 heart of the issue at the moment.

5 And then the question also, I'll be discussing this
6 with Mr. Hornstine, there's a question of mootness, although I
7 think the government is mistaken as to who has the burden of
8 proof that this won't recur and evade review, which is why I
9 pointed out *Already* to you. So anyway, you can keep going.

11:07 10 MR. AYYADURAI: Yes. Finalizing on this point, Your
11 Honor, I believe interfering in a candidate's ability to
12 campaign in retaliation for the content of his tweet is
13 specifically prohibited by the U.S. Constitution.

14 THE COURT: Are you being restricted in any way now?
15 Are you under any suspension now?

16 MR. AYYADURAI: Well, Your Honor, what happened was
17 any time -- so I got off suspension. Any time I referred to
18 those emails, the Tassinari emails, anything related to that I
19 got suspended again. And that is why I'm concerned --

11:07 20 THE COURT: Suspended or deleted?

21 MR. AYYADURAI: Forced to delete, forced to delete
22 them and suspended.

23 THE COURT: Okay. Now, I see your email says you
24 invented the internet. I didn't.

25 MR. AYYADURAI: I invented the first email system.

1 THE COURT: I didn't. So I'm trying to understand the
2 distinction between being required to delete a tweet and being
3 suspended. I thought, perhaps mistakenly, that you were
4 ordered to delete -- I thought it was seven tweets, according
5 to your complaint, and that you were suspended for 14 days, and
6 I thought that meant you couldn't send any tweets for 14 days.
7 Did I understand that right?

8 MR. AYYADURAI: Yes. The distinction is Twitter -- if
9 there's a tweet, the tweets that they have, you have to remove
11:08 10 them, and they give you a suspension for a certain number of
11 days. They do both, Your Honor. So they force you to remove
12 them and they suspend you.

13 THE COURT: Then you can't -- if you're suspended, is
14 it your position that you're not permitted to send any tweet?

15 MR. AYYADURAI: Any tweets at all.

16 THE COURT: So you couldn't tweet, "I'm really
17 disappointed the Patriots lost last weekend."

18 MR. AYYADURAI: Anything. And there was only 39 days,
19 when this occurred, left in the election, and I use Twitter as
11:09 20 my main medium. And I have a quarter of a million followers.
21 My prospective voters are on it. People from Massachusetts
22 watch my tweets. So this has been very, very hampering. And
23 I've been tweeting for ten years. I've built my audience very,
24 very carefully.

25 THE COURT: All right. But are you today suspended

1 from tweeting?

2 MR. AYYADURAI: Yes.

3 THE COURT: Okay, so you are.

4 MR. AYYADURAI: Yes. And it just happened, because I
5 was unsuspended, and then we had various rallies which I was
6 tweeting. Then right when I referred to that email
7 conversation, again I was suspended. So this is ongoing.

8 THE COURT: For how long are you suspended now?

9 MR. AYYADURAI: I believe it's for another two days.

11:10 10 But none of the other tweets got flagged or removed. It's only
11 when I refer to those email conversations, Your Honor.

12 THE COURT: So it's your contention under oath that
13 it's only when you refer to your criticism of the Secretary of
14 State for allegedly acting illegally that Twitter requires that
15 you delete that tweet and then suspends you for some period of
16 time?

17 MR. AYYADURAI: Yes.

18 THE COURT: You say there were two more days left on
19 the current suspension. When did that one start?

11:10 20 MR. AYYADURAI: About three days ago.

21 THE COURT: So this is a five-day suspension?

22 MR. AYYADURAI: Yeah, I believe that to be true, yeah.

23 THE COURT: How long was the first one?

24 MR. AYYADURAI: Well, the first one they did was seven
25 days and another seven days. So about 14 days, a little bit

1 over 14 days. 14.5 hours -- 14.5 days, to be exact.

2 THE COURT: It was seven days, and then did something
3 cause them to add another seven days?

4 MR. AYYADURAI: Yes. So the first time I did it was
5 for the four tweets. Then when I got off Twitter I again
6 referred to those emails, and I was talking about the violation
7 of federal law, and again, bam, I was banned again. So it's
8 reference to those emails, reference to the violation of
9 federal law by the Secretary of State. This is ten years,
10 30,000 tweets, I've never been thrown off Twitter but by this.

11 So getting back to the issue of government speech,
12 government official being blocked from interfering in a
13 campaign simply because he claims a candidate made an
14 inaccurate statement is not, quote-unquote, "stifling
15 government speech," as the defendant has asserted in their
16 opposition.

17 And as I understand, people are allowed to make
18 inaccurate and even completely false statements during a
19 political campaign as one of many in a marketplace of ideas.
20 And a government official cannot be refereeing what is accurate
21 or inaccurate political speech of a candidate. As I understand
22 it, it's simply against the law.

23 And this is in addition to the fact that the tweets
24 that Secretary Galvin claimed were a threat to voters displayed
25 emails from Counsel Tassinari that documented the office's

1 conscious violation of federal law. Quote-unquote, "government
2 speech" may not serve as a convenient pretext for shutting down
3 political speech on matters of great public concern.

4 Furthermore, no amount of support from the, quote-unquote,
5 "intelligence community" that the opposition refers to can
6 overcome this point of law.

7 And the third point I would like to make is the
8 opposition declaring Eleventh Amendment immunity bars all of my
9 claims. This case falls squarely under the *Ex Parte Young*
10 exception to Eleventh Amendment immunity. And I'd like to
11 explain this. This emergency motion for prospective injunctive
12 relief, meaning in the future, names a state official in his
13 official capacity. The relief sought here is for protection
14 from specific actions in the future by a state official. The
15 defendant's opposition is absolutely incorrect and
16 mischaracterizing the motion for TRO as dealing only with past
17 action.

18 Eleventh Amendment immunity does not apply to this
19 motion, and it is properly within the jurisdiction of this
11:13 20 court. It is a live controversy, as Election Day is still a
21 week away from now, and it must not be dismissed as moot, which
22 distinguishes from the *Already v. Nike* case.

23 Your Honor, after the initial suspension of 14 days,
24 Twitter allowed me to post election fraud, no problem, but the
25 minute I again mention the emails from Galvin's office, bam,

1 again I was forced to delete that tweet again.

2 It is assured, Your Honor, that between now and
3 November 3 that Secretary Galvin will have Twitter silence my
4 speech, specifically, I repeat, specifically regarding emails
5 from his office that document his violation of federal law.

6 So yes, his behavior is both ongoing and assured to
7 reoccur. And given the election is not over, the future is
8 still in play. Defendant Galvin can still call Twitter and
9 have me muted until Election Day. That's why the TRO must be
10 issued today. I've already suffered irreparable harm during
11 this election campaign. I should not be forced to suffer
12 further harm from Secretary Galvin's unconstitutional action
13 and will cause him absolutely no harm.

14 THE COURT: Okay.

15 MR. AYYADURAI: I'm sorry, Your Honor.

16 THE COURT: That's okay. Go ahead. Why don't you
17 finish. And I'm going to give Mr. Hornstine an opportunity to
18 question you, cross-examine you if he wants. He doesn't have
19 to. But there may be some questions that I didn't think to ask
20 that the defendant thinks will be helpful. Go ahead.

21 MR. AYYADURAI: So on this matter, Eleventh Amendment
22 immunity, I respectfully submit that Secretary Galvin has
23 deliberately chosen to muddy the picture by dragging in the
24 monetary claims. The court must not be distracted from this in
25 making its decision on the TRO.

1 And I have a minor -- and the last point I want to
2 make, Your Honor, in closing, is the evidence is overwhelming
3 that Secretary Galvin strongly encouraged Twitter to mute me
4 solely because I revealed official email documents from his own
5 legal counsel that showed his office violated federal law.
6 This was not, quote-unquote, "election misinformation" or
7 hyperbole or fiction. The evidence is clear he will do it
8 again if the court does not stop him.

9 I strongly urge the court to issue this injunction
10 today. And furthermore, there's zero harm to Secretary Galvin
11 being enjoined from muting my speech on Twitter for a total now
12 of a remaining four days. Thank you, Your Honor. I'm
13 available for any clarifications.

14 THE COURT: All right. And Mr. Hornstine, are there
15 any questions relating to some of these factual assertions that
16 you would like to ask Dr. Shiva about?

17 MR. HORNSTINE: If it pleases the court, yes, I would
18 like to ask a few follow-up questions.

19 THE COURT: Go ahead.

11:16 20 EXAMINATION OF SHIVA AYYADURAI

21 EXAMINATION BY MR. HORNSTINE:

22 Q. So let me begin by asking this: Have you ever looked at
23 Twitter's Terms of Use Agreement?

24 A. Not their entire one, but I've looked at parts of it.

25 Q. Are you aware that Twitter requires users to agree to

1 certain terms of use and to abide by certain policies as a
2 condition of participating on that social media platform?

3 A. Yes.

4 Q. Are you aware that as part of these terms of use that
5 Twitter, the company, has a specific policy on civic integrity,
6 as they call it?

7 A. Something in there, but I'm not exactly aware of the exact
8 term.

9 Q. So you've never read the civic integrity policy of
10 Twitter, have you?

11 A. I may have seen it, but I don't remember it exactly.

12 Q. Are you aware whether or not the policy provides that
13 users cannot use Twitter's services for the purpose of
14 manipulating or interfering in elections or other civic
15 processes?

16 A. That may be true.

17 THE COURT: We may want -- actually, I'll let you do
18 this. Go ahead.

19 MR. HORNSTINE: Okay. Very well. Thank you, Your
11:18 20 Honor. I'll try to keep this brief at least.

21 THE COURT: If I think you're wasting time, I'll tell
22 you.

23 MR. HORNSTINE: Thank you, Your Honor.

24 BY MR. HORNSTINE:

25 Q. Are you aware that as part of its civil -- as part of its

1 civic integrity policy and also as its general terms of use
2 that Twitter reserves the right to discipline users, for lack
3 of a better word, for violating these terms of use?

4 A. That may be true.

5 Q. Okay. Are you aware that Twitter can delete tweets that
6 it deems in violation of its terms of use?

7 A. I wasn't sure about that. I didn't know about that.

8 Q. Are you aware that Twitter can suspend users for violation
9 of policies or terms of use?

11:18 10 A. That's possible.

11 Q. And are you aware that Twitter can also label tweets as
12 false or misleading for violations of terms of use or its civic
13 integrity policy?

14 A. That may be possible.

15 Q. And you understand that the sanctions are imposed by
16 Twitter itself, correct?

17 A. This was induced by the Secretary of State.

18 Q. That's not what I'm asking, sir. What I'm asking is this.
19 Are you aware that any sanctions imposed by Twitter, that that
11:19 20 is Twitter's decision to make, not anyone else's decision to
21 make?

22 A. Well, that's not completely true.

23 Q. So you disagree with that assessment?

24 A. Yes.

25 Q. And what do you base that disagreement on, sir?

1 A. Well, as I shared in my presentation on the merits, that
2 in this situation, there's an enormous -- Twitter is a publicly
3 traded company. A publicly traded company's stock prices
4 affect them significantly in the stock market.

5 So given the preponderance of pressure on Twitter to watch
6 out for election information, the gravitas of the Secretary of
7 State contacting them is what induced them to do this.

8 Q. Have you personally observed any communication between the
9 Secretary's Office and Twitter concerning its decision to
10 suspend or sanction you?

11 A. I would -- no, I have not, except what has been reported.

12 Q. Have you ever witnessed anyone from the Secretary's Office
13 coerce Twitter to suspend or sanction you from your use of
14 Twitter?

15 A. We have reports as is reported in that article and
16 multiply in the A.P. and Reuters that the Secretary of State's
17 Office contacted Twitter.

18 Q. That's not what I'm asking. Let me ask a more clear
19 question. I'm not asking what news reports you've read. I'm
20 asking have you personally ever witnessed anyone from the
21 Secretary's Office coerce Twitter to suspend or otherwise
22 sanction you?

23 A. Can you define "witnessed"? I don't understand what you
24 mean "witnessed."

25 Q. That you observed with your own five senses, that you

1 personally saw. Not someone else's report. Your own.

2 A. I don't know how I would witness that. I'm not in the
3 Secretary of State's physical office.

4 Q. So then you have not witnessed that. Is that fair to say?

5 A. The report said they did it.

6 Q. So what you are basing your complaint on is then reports,
7 not personal observations; is that correct?

8 A. It was confirmed in the affidavit that was submitted that
9 they did contact Twitter.

11:21 10 Q. Okay. So you have no idea personally what the content of
11 the report that the Secretary's Office made to Twitter was. Is
12 that fair to say?

13 A. No. We do have information. They describe my tweets as,
14 unquote-unquote, "election misinformation."

15 Q. Have you ever seen the report that the Secretary made to
16 Twitter --

17 A. No.

18 Q. -- about your September 24 tweet?

19 A. Have I ever actually seen their communication? Is that
11:22 20 what you're asking me?

21 Q. That's correct.

22 A. No. We have reports of it, though.

23 Q. Have you ever seen it?

24 A. Well, I've seen the affidavit that they just submitted,
25 which they confirm that they contacted Twitter.

1 THE COURT: Here. This is getting a little
2 repetitious. The affidavit -- and I intend to ask about
3 this -- doesn't provide the content of what was communicated.

4 I'm looking at Ms. O'Malley's affidavit, and she says
5 in Paragraph 5, "Attorney Tassinari asked me to report Mr.
6 Ayyadurai's tweet as false using the mechanism within Twitter
7 for reporting tweets that violate the terms and conditions of
8 that platform."

9 Paragraph 6. "Per Attorney Tassinari's request, I
10 submitted a report of Ayyadurai's false tweet online through
11 the Twitter platform."

12 Paragraph 7. "In response I received what appeared to
13 be an automated email response informing me that Twitter would
14 investigate my report and contact me if they needed additional
15 information."

16 Paragraph 8. "I received no further communication
17 from Twitter."

18 So this tells us there's a report. Is there another
19 document that you believe indicates what the content of that
11:23 20 report was?

21 MR. AYYADURAI: I'm not sure how discovery works and
22 I'm not a lawyer, but literally within moments, it was
23 immediate and swift that I was asked to remove the four
24 particular email screenshots, tweets of my communication with
25 Ms. Tassinari where I exposed that the Secretary of State was

1 violating federal law. That was the immediate result. And
2 I've never been banned, to the best of my knowledge.

3 THE COURT: I don't want to hear the argument.
4 Mr. Hornstine, why don't you resume if you want.

5 MR. HORNSTINE: Thank you, Your Honor.

6 BY MR. HORNSTINE:

7 Q. As a frequent Twitter user, are you aware that any Twitter
8 user can make a complaint about any other tweet on the social
9 media platform?

11:24 10 A. That's -- yes, that's possible, yeah.

11 Q. So is it possible then that people other than the
12 Secretary's Office lodged complaints about your tweets?

13 A. That could be possible.

14 Q. Okay. Let me ask about the chronology for suspensions.
15 So you were initially suspended on September 26 of 2020; is
16 that correct?

17 A. It may have been in the morning, because when I woke up is
18 when I saw it, I think around 8:00 or 9:00 a.m.

19 Q. So we can say on or about September 26 is when you were
11:25 20 initially suspended by Twitter; is that correct?

21 A. Yes.

22 Q. And this first suspension you claim was a direct result of
23 the Secretary's report to Twitter. Is that your contention?

24 A. It was not a claim. It is a fact because that's the four
25 tweets that came up to be removed. It's not a contention.

1 It's fact.

2 Q. Okay. But you just said that other people may have lodged
3 complaints with Twitter about your tweets; is that correct?

4 A. Well, you said that.

5 Q. You agreed that it was possible, did you not?

6 A. Not in reference to this.

7 Q. Okay. But you have since been suspended additional times
8 by Twitter; is that correct?

9 A. It was right after that that it was -- the actual state of
11:25 10 events was that after those four tweets, immediately after
11 that, when I tried to log in, then another three tweets
12 referring to those emails were also suspended for seven days.
13 It was contiguous.

14 Q. Let me ask a clarifying question. So you were initially
15 suspended around September 26; is that correct?

16 A. Yes.

17 Q. And then when did your second suspension begin?

18 A. So that was for a half a day. And immediately when I
19 logged in, they then suspended me for another three tweets
11:26 20 which are in reference to these emails where I was talking
21 about the Secretary of State violating federal law.

22 Q. You're only familiar with one complaint that the Secretary
23 made to Twitter; is that correct?

24 A. Well, that one complaint has to do with those four emails,
25 and the other three tweets are related to those four emails.

1 Q. So your initial suspension -- excuse me. Let me strike
2 that question. Looking at your Twitter account, I see no
3 tweets that you made between September 26 and September 3; is
4 that correct?

5 A. September 3? That's going backward in time.

6 Q. October 3. I apologize, sir.

7 A. Yeah. So that's when I was suspended for about seven
8 days.

9 Q. Then you were suspended again -- or excuse me. I see no
11:27 10 tweets on your account between October 6 and October 15; is
11 that correct?

12 A. Exactly. That was the second suspension.

13 Q. Okay. And are you aware of any second instance in which
14 the Secretary's Office made a complaint relating to your
15 tweets?

16 A. Well, this is all related to any time the reference is
17 made to Secretary of State and those email conversations.
18 Because when I started --

19 Q. Sir, that's not my question --

11:27 20 THE COURT: I think the answer -- I'll give you a
21 chance later perhaps to argue this. But do you -- the question
22 is are you aware that the Secretary of State communicated with
23 Twitter a second time about you, or is it your contention that
24 the first one has enduring effect?

25 MR. AYYADURAI: That is my contention, Your Honor.

1 Because of the gravitas of the office, given the pressure that
2 Twitter is under, if the Secretary of State with bare gravitas
3 calls them and uses a dog whistle of election misinformation,
4 this is basically branding you. And that's what the Secretary
5 of State did with their office's gravitas. This is no light
6 matter. I've been on Twitter for ten years.

7 THE COURT: I understand. I have that point. That's
8 not the question. Listen to the questions, listen to the
9 questions, say what's necessary to answer the question fully.
10 Don't add anything at this point.

11 MR. AYYADURAI: Thank you, Your Honor.

12 THE COURT: Go ahead, Mr. Hornstine, if you have more.

13 MR. HORNSTINE: Thank you, Your Honor. So just a few
14 more questions about the chronology.

15 BY MR. HORNSTINE:

16 Q. So again, to tie it back, you had another suspension which
17 ended around October 15; is that correct?

18 A. Yes.

19 Q. And I see that your last tweet on Twitter was on or about
11:28 20 October 25; is that correct?

21 A. That's correct, yes.

22 Q. Okay. And you have not tweeted since then; is that
23 correct?

24 A. Yes.

25 Q. And you believe that you are currently under a new

1 suspension for Twitter, and my math may be wrong here, so
2 correct me if I'm wrong, that would lapse on or about Election
3 Day; is that correct?

4 A. From my understanding, it should be around Saturday or
5 Sunday.

6 Q. Saturday or Sunday?

7 A. Yes.

8 Q. Okay. And are you aware whether or not, one way or the
9 other, the Secretary's Office has made additional complaints
10 about any of your tweets during the month of October?

11 A. I am not aware, but the two tweets that resulted in the
12 second suspension again referred back to those emails.

13 MR. HORNSTINE: If I may just have one moment, Your
14 Honor. Let me look through my notes. I think Your Honor
15 covered most of the rest of it.

16 THE COURT: Thank you.

17 MR. HORNSTINE: I think I have nothing further, Your
18 Honor. Thank you for the opportunity.

19 THE COURT: Okay. Why don't we turn to the
11:30 20 defendant's argument then. You raised a threshold issue in
21 your memorandum claiming that -- it's on page 10, "Plaintiff's
22 section 1983 claim is barred because the Secretary is not a
23 person who may be sued under 1983." You cite, among other
24 things, footnote 10 of *Will*, 491 U.S. 58, 71, note 10. Is that
25 one of your contentions? Did I read it right?

1 MR. HORNSTINE: I'm pulling up the motion. But yes,
2 it is correct to -- this largely dovetails with the Eleventh
3 Amendment piece. And again, perhaps Your Honor's question at
4 the outset about what relief is being sought is clarifying.
5 Since there are limitations on the ability, as Your Honor is
6 well aware, of plaintiff to sue an elected official in his
7 official capacity --

8 THE COURT: Well, I am aware of *Will*, and this is part
9 of the reason I asked whether you were in the government
10 bureau, because I think you've argued *Will* exactly wrong.

11 I'll listen to you. But footnote -- I mean, I just
12 finished two months of litigation and wrote a 102-page decision
13 in *Baptiste v. the Governor and Secretary of Housing and*
14 *Economic Affairs*.

15 The government bureau didn't take the position that
16 there couldn't be a suit for prospective injunctive relief
17 because it was barred by *Will*. I don't think that was an
18 oversight. You can argue about whether there's any ongoing
19 harm, whether it's going to recur, whether the declaratory
11:32 20 judgment would be sufficient and I shouldn't issue an
21 injunction. But I'm just reading this, it's a one-paragraph
22 argument, but it's the substantive argument you made before the
23 others. If you're right, we can go home pretty soon, but I
24 don't think you're right. So why don't you tell me why you
25 wrote that.

1 MR. HORNSTINE: Yes, Your Honor. Does the court wish
2 that I should address the Eleventh Amendment issue separately?

3 THE COURT: Not -- you'll get a chance to do that
4 separately. But I don't see a reference here -- well, there is
5 the Eleventh Amendment in the last sentence. But I mean, *Will*
6 states in footnote 10 -- the question is whether -- so section
7 93 provides a remedy, it doesn't provide any rights, you
8 explain that, and a remedy against a person who violates the
9 statutes or laws of the United States.

11:33 10 And footnote 10 says, "Of course a state official in
11 his or her official capacity, when sued for injunctive relief,
12 would be a person under 1983 because official capacity actions
13 for prospective relief are not treated as actions against the
14 state, not barred by the Eleventh Amendment." So I don't
15 understand why I got this argument in this case and didn't get
16 it in *Baptiste*, except that it's not right.

17 MR. HORNSTINE: I understand, Your Honor. Again, as I
18 said a moment ago, I think Your Honor's question about the
19 precise relief being sought is clarifying to this argument.
11:34 20 And I'm happy to step away from this argument. Again, it was
21 again clear -- or unclear at least at the outset as to whether
22 or not the plaintiff, who again is proceeding pro se, is
23 attempting to seek damages against defendant in his official
24 capacity.

25 THE COURT: But that's a different issue. I cited you

1 the case October 20, *Quern*.

2 MR. HORNSTINE: Correct, the *Quern* case.

3 THE COURT: It's clearly barred, but that's not what
4 you're discussing here. You're making a different argument
5 here.

6 MR. HORNSTINE: I agree, but it primarily proceeds
7 from the damages piece, and I'm happy to move on.

8 THE COURT: It doesn't say that. You're happy to move
9 on. Frankly, I'm not. You represent the government. You
10 should always be accurately describing the law. But here
11 you've got a pro se litigant on the other side. And, you know,
12 we're talking about the nuances of constitutional law, and the
13 case is going very quickly.

14 And, you know, this is not the only case I have. I've
15 been dealing for the last couple of days with an MS-13 murder
16 case. But this is consequential. We're talking about
17 fundamental constitutional law a couple of days before an
18 election. So I expect that if the Attorney General is going to
19 give me a brief, I'm going to take it seriously. But I was
20 surprised to see this argument because it's not an argument
21 that your bureau of your office has made to me before as
22 recently as in the last two months in another suit against a
23 cabinet secretary and the governor. And I've been spending
24 time trying to think if I've misunderstood *Will*. I don't think
25 I did.

1 But, anyway. Because I mean, you also didn't deal
2 with the fundamental -- what to me, I pointed out to you, is
3 the fundamental issue in this case. Of course private conduct
4 is not governed by the First Amendment, but the question is
5 whether what Twitter did can fairly be -- was most
6 appropriately characterized probably at the outcome of this
7 case as government conduct. That's the *Blum* line of cases.
8 Were you aware of *Blum* before I cited it to you yesterday?

9 MR. HORNSTINE: I'm aware of the line of cases, yes,
10 Your Honor. And we attempted to address it again, with
11 apologies for perhaps moving too quickly and too inartfully,
12 the idea that plaintiff overlooked the critical fact that the
13 Secretary could not indeed, is not empowered to suspend anybody
14 under Twitter. And I'd be happy to more directly address the
15 *Blum* case and to talk about what the --

16 THE COURT: I want you to. That's why I pointed it
17 out in my order yesterday. But you didn't address at all in
18 this memorandum the circumstances in which conduct by a private
19 party is state action for, in this case, First Amendment
20 purposes.

21 So I know we're on a motion for a temporary
22 restraining order. We're all going fast. But on October 20, I
23 issued an order saying that the defendant should be prepared to
24 respond promptly once service is effected. So it's not like
25 you had one day to do this. More like you had ten days to do

1 it almost, eight days. Anyway, go ahead.

2 MR. HORNSTINE: Yes, Your Honor. I'd be happy to do
3 this. And I believe, again, there's some discussion of this as
4 it relates specifically to social media in the *Morgan* case, the
5 Kentucky case involving Governor Bevin in that state.

6 But to address *Blum* more directly, as I understand
7 Blum, the state can't be held liable for a public -- or excuse
8 me -- from a private actor's decision unless there is some
9 significant coercion by the government or some coercive power
11:39 10 that the government holds over the private actor.

11 And in this case, Your Honor, all plaintiff points to
12 is political climate; that there is a lot of pressure on social
13 media networks like Twitter, like Facebook, to act a certain
14 way.

15 I believe the court will, after the presentation, ask
16 of Ms. O'Malley and Ms. Tassinari what happened here. And I
17 believe that you will hear them say, as they do in their
18 affidavits, that Ms. O'Malley completed an online form and
19 received a form email back from Twitter saying they would
11:39 20 investigate the matter. And as plaintiff's subsequent
21 suspensions from Twitter make clear, other Twitter users can do
22 this, too. It's not just the Secretary. Any user of Twitter
23 can lodge a complaint.

24 THE COURT: But at that point, that strikes me at the
25 moment as speculative. You know, if we get to discovery,

1 you'll be able to find out if other people complained.

2 MR. HORNSTINE: Maybe or maybe not. I don't know that
3 we will, but I guess it's conceivable we can ask Twitter.

4 THE COURT: But right now there's no evidence that
5 anybody else complained.

6 MR. HORNSTINE: Correct.

7 THE COURT: And I have to draw reasonable inferences
8 from facts. The Secretary complained. I'm told the suspension
9 immediately followed. And the plaintiff keeps getting
10 suspended again each time he refers to the emails with
11 Ms. Tassinari that triggered the first suspension.

12 MR. HORNSTINE: To be clear, I think we may be talking
13 about different things, plaintiffs and my clients or my
14 clients' witnesses here. They lodged a complaint about a
15 single tweet, not certain emails that were threaded.

16 THE COURT: And I want to -- explain that to me, and
17 then I think I will have some questions.

18 MR. HORNSTINE: I will do my level best to do so. My
19 understanding -- and again, please do follow up with the
11:41 20 clients' witnesses here -- is, again, they submitted a
21 complaint with Twitter, received a form email back saying
22 Twitter would investigate. That was the only communication
23 that the Secretary's Office had with Twitter.

24 THE COURT: Did the complaint identify that it was
25 coming from the Secretary's Office?

1 MR. HORNSTINE: A good question for Ms. O'Malley. But
2 my understanding is that the complaint was submitted through
3 the Mass. Elections Twitter account. That is a worthwhile
4 follow-up. Don't take my word for it. You can address it with
5 Ms. O'Malley.

6 And at that point there was no expectation or further
7 expectation that anything necessarily would be done by Twitter.

8 THE COURT: Here. Why don't we do this. Because I
9 think you're being helpfully careful. Why don't we ask
11:42 10 Ms. O'Malley -- why don't I ask Ms. O'Malley these questions,
11 and then you can ask some questions.

12 MR. HORNSTINE: It may be valuable, if you wish to
13 start with Ms. O'Malley, that may be useful, but inasmuch as
14 Ms. O'Malley was taking instructions from Ms. Tassinari, it may
15 be chronologically helpful to start with her, but proceed
16 however the court wishes, obviously.

17 THE COURT: Why don't we do it this way. I'll let you
18 question them in the order you prefer.

19 MR. HORNSTINE: If that is the case, I will defer to
11:42 20 my colleague, Ms. Sterman, to do the questioning.

21 THE COURT: All right. Doctor, do you understand that
22 I'm going to hear this evidence? I have some questions, but
23 you'll get a chance to ask questions, too. Okay?

24 All right. Ms. Sterman, who would you like to call
25 first?

1 MS. STERMAN: Thank you, Your Honor. We'll start with
2 Ms. Tassinari, if that's agreeable to the court.

3 THE COURT: Ms. Tassinari, do you swear that the
4 testimony you're about to give will be the truth, the whole
5 truth and nothing but the truth so help you God?

6 MS. TASSINARI: Yes.

7 THE COURT: Okay. Try to keep this focused and
8 efficient, please.

9 EXAMINATION OF MICHELLE TASSINARI

11:43 10 EXAMINATION BY MS. STERMAN:

11 Q. Ms. Tassinari, where do you work?

12 A. Secretary of State's Elections Division.

13 Q. What's your position there?

14 A. I'm the director and legal counsel.

15 Q. And can you just briefly describe to us what your
16 responsibilities are in those capacities.

17 A. In the Elections Division we oversee the administration of
18 state and federal elections, including the nomination papers,
19 ballot printing, ballot access.

11:44 20 Q. Are you familiar with the plaintiff in this case?

21 A. I am.

22 Q. How so?

23 A. He has been a candidate for office in the past and was a
24 candidate for U.S. Senate in the republican primary -- for the
25 September 1 primary.

1 Q. Following that September 1 primary, did you receive any
2 correspondence from him?

3 A. I did, yes.

4 Q. What was the nature of that correspondence?

5 A. He submitted a public records request to our office.

6 Q. And what was he looking for in that public records
7 request?

8 A. The public records request was seeking electronic
9 documents relative to voting equipment used in Massachusetts.

11:44 10 Q. Did you respond to that request?

11 A. I did.

12 Q. At some point after this correspondence with the plaintiff
13 regarding his public records request, did you become aware of
14 social media posts that he was making regarding the exchange?

15 A. I did.

16 Q. How so?

17 A. We had one of our local election officials who had
18 forwarded us an email they received from a voter in their town
19 that indicated that Shiva was claiming election fraud, which
11:45 20 prompted us to look at -- to simply Google and look for any
21 materials regarding this.

22 Q. Was that the only contact you received regarding his
23 social media post?

24 A. No. We had received I believe at least one or two emails
25 into our Elections Division email inquiries as well as some

1 telephone calls.

2 Q. And did you -- were you able to locate that tweet?

3 A. Yes.

4 Q. And can you describe the content of the tweet.

5 A. The tweet had indicated that over a million ballots had
6 been destroyed in violation of federal law.

7 Q. Was that an accurate statement in your view?

8 A. No.

9 Q. Why not?

11:46 10 A. Because every single paper ballot that was cast in the
11 September state primary is being -- it has been secured and
12 sealed and will remain preserved for 22 months, which is what
13 the federal law requires.

14 Q. And I don't know if you have your affidavit handy,
15 Ms. Tassinari.

16 THE COURT: Well, she hasn't shown she needs her
17 recollection refreshed on anything. What's the question?

18 MS. STERMAN: I was merely going to confirm that the
19 tweet pictured under Paragraph 8 is the same tweet we're
11:46 20 talking about, just to make sure we're all on the same page.

21 THE COURT: Thank you. That's fine.

22 Q. I'm sorry. Ms. Tassinari, that is the tweet you're
23 referring to?

24 A. Yes.

25 THE COURT: Is this the one, it's in paragraph 8 of

1 docket number 15.2, Ms. Tassinari's affidavit, correct?

2 MS. STERMAN: That's right, Your Honor.

3 THE WITNESS: Yes.

4 BY MS. STERMAN:

5 Q. Did you take any action in response to that tweet after
6 you viewed it?

7 A. Yes. I asked Deb O'Malley to use our Twitter platform to
8 report that.

9 Q. Where did you do that?

11:47 10 A. I thought it was inaccurate and was providing false
11 information about the election which may lead voters to either
12 question the election process or perhaps not even participate
13 in the upcoming election.

14 Q. Did you instruct Ms. O'Malley to report any other tweets
15 aside from the one pictured in paragraph 8 to your affidavit to
16 Twitter?

17 A. No.

18 Q. Did you hear a little earlier this morning the plaintiff
19 referred to a thread of four tweets that screenshoted his email
11:48 20 exchange with you? Did you hear that testimony?

21 A. I did.

22 Q. Have you ever seen those tweets?

23 A. I believe I did see those.

24 Q. Did you report those tweets to Twitter?

25 A. No.

1 Q. Did you ask Ms. O'Malley to report those tweets to
2 Twitter?

3 A. No.

4 Q. Did you do anything else to cause that series of four
5 tweets to be reported to Twitter?

6 A. No.

7 Q. Aside from the single tweet that you requested
8 Ms. O'Malley report to Twitter, have you or your office, to
9 your knowledge, had any other interaction with Twitter about
10 the plaintiff or any of his tweets?

11:48

11 A. No.

12 Q. Have you asked your staff to report any other tweets by
13 the plaintiff?

14 A. No.

15 MS. STERMAN: Your Honor, I think that sets forth the
16 basic groundwork, unless you have additional questions that
17 you're wanting from Ms. Tassinari.

18 THE COURT: I do.

19 Ms. Tassinari, is Dr. Shiva the only person the
20 Secretary of State's Office has reported to Twitter about?

11:49

21 THE WITNESS: No.

22 THE COURT: About how many others?

23 THE WITNESS: I can only recall one previous, one
24 previous time in which a tweet was reported which had incorrect
25 deadlines.

1 THE COURT: And what happened as a result of that, if
2 anything?

3 THE WITNESS: I believe that Twitter also removed the
4 incorrect information from that tweet.

5 THE COURT: And I think you said -- well, have you
6 ever communicated with Twitter about its policy with regard to
7 tweets that relate to elections?

8 THE WITNESS: No.

9 THE COURT: Have you ever -- have you read anything
10 about their policies and practices with regard to what they do
11 with regard to such tweets if there's a report?

12 THE WITNESS: I believe I have been presented with --
13 I have seen an email from Twitter in the past or from an
14 organization providing us information about Twitter's policy
15 use and how to report misinformation generally as an election
16 office.

17 THE COURT: Did you get that from Twitter, or did you
18 get that from some other organization?

19 THE WITNESS: I believe it came through the National
11:50 20 Association of Secretaries of State, disbursed it for Twitter.

21 THE COURT: I'm sorry, it came from the National
22 Association of Secretaries of State -- and I didn't hear the
23 end of your answer.

24 THE WITNESS: Disbursed by them for Twitter.

25 THE COURT: Okay. And what did it say?

1 THE WITNESS: It provided a platform if you believe
2 there was misinformation, disinformation regarding elections
3 and how to report that to Twitter.

4 THE COURT: Did it say what Twitter's practice or
5 policy would be if it received such reports from a Secretary of
6 State?

7 THE WITNESS: I do not recall that.

8 THE COURT: Have you spoken to colleagues in other
9 Secretary of States' offices or government offices about
11:52 10 whether they've made reports to Twitter?

11 THE WITNESS: I have not.

12 THE COURT: I think you said that you asked
13 Ms. O'Malley to make the report on the Election Division's
14 Twitter account; is that correct?

15 THE WITNESS: Yes.

16 THE COURT: And would that have identified the report
17 as coming from the Secretary of State's Election Division?

18 THE WITNESS: Yes.

19 THE COURT: I know I'm repeating this, but you say you
11:53 20 believe that your office has only reported on one other tweet
21 to Twitter because it had incorrect dates concerning an
22 election.

23 THE WITNESS: Yes.

24 THE COURT: And it's your understanding that Twitter
25 removed that?

1 THE WITNESS: Yes.

2 THE COURT: Are you aware that before -- he just
3 testified to this, and I think you said you saw the string.
4 But what caused you to request or report or cause a report to
5 be made with regard to the tweet that's in paragraph 8 of your
6 affidavit but not any of the other of Dr. Shiva's tweets?

7 THE WITNESS: We had made the report of the original
8 tweet. I don't believe we had seen the other tweets at that
9 time. And the original tweet was certainly alarming and
10 casting doubt on the election process and the integrity of the
11 process in Massachusetts.

12 THE COURT: Is there a reason that you didn't -- so
13 the Election Division has a Twitter account, right?

14 THE WITNESS: Correct.

15 THE COURT: And did you tweet out that Dr. Shiva's
16 wrong; the Secretary of State is in compliance with federal
17 law; we maintain all the paper ballots for 22 months as it
18 requires?

19 THE WITNESS: We did not tweet that, no.

11:55 20 THE COURT: Why not?

21 THE WITNESS: I don't know. Hadn't occurred to us.
22 We did respond to multiple emails and telephone inquiries about
23 it.

24 THE COURT: Dr. Shiva, do my questions suggest any
25 further questions to you?

1 MR. AYYADURAI: Yes, Your Honor. I have at least one
2 or two questions, if I may, please.

3 THE COURT: Go ahead.

4 MR. AYYADURAI: It's a question to Ms. Tassinari.

5 EXAMINATION BY MR. AYYADURAI:

6 Q. Ms. Tassinari, is the Mass. Elections Twitter account a
7 verified account or a not verified account?

8 A. Verified account.

9 THE COURT: What is a verified account?

11:56 10 MR. AYYADURAI: Your Honor, there are two types of
11 Twitter accounts. Those that are sort of people who could be
12 anyone, sort of your average public citizen or average public,
13 and there are verified accounts, which you have to go through a
14 due diligence process with Twitter, and you get a little blue
15 checkmark next to your Twitter account. That means, it
16 essentially adds more gravitas to who you are and that Twitter
17 has actually acknowledged that you are who you say you are. I
18 believe when I did it, for example, I --

19 THE COURT: That's okay. That's enough. What's your
11:56 20 next question?

21 BY MR. AYYADURAI:

22 Q. The next question is, the other individual that reported
23 an issue with election, quote-unquote, "misinformation," was
24 that person a candidate running for office?

25 A. I don't recall. I believe it was an organization.

1 Q. Okay. And I just want to clarify. So in response to my
2 email, there was no tweets I could see that your office did, is
3 that true, to refute what I was saying?

4 A. I did not -- I do not do any of the tweets, so I do not
5 know.

6 MR. AYYADURAI: Thank you.

7 THE COURT: To your knowledge, there were none,
8 though; is that right?

9 THE WITNESS: I don't believe so.

11:57 10 THE COURT: Who does the tweets?

11 THE WITNESS: Ms. O'Malley.

12 THE COURT: So I think she's the next witness. Hold
13 on a second. Let me just check and see if I have any other
14 questions. I don't think so.

15 Ms. O'Malley, do you swear that the testimony you're
16 about to give will be the truth, the whole truth and nothing
17 but the truth so help you God?

18 MS. O'MALLEY: I do.

19 EXAMINATION OF DEBRA O'MALLEY

11:58 20 THE COURT: Ms. Sterman, go ahead.

21 MS. STERMAN: Thank you, Your Honor.

22 EXAMINATION BY MS. STERMAN:

23 Q. Ms. O'Malley, why don't we pick up where Ms. Tassinari
24 left off. Did you hear her testimony that she asked you to
25 report a September 24 tweet by the plaintiff in this case to

1 Twitter?

2 A. Yes, I did.

3 Q. And did she in fact ask you to report that tweet?

4 A. Yes, she did.

5 Q. And what action did you take to report the tweet?

6 A. I logged into the Elections Division Twitter account and
7 accessed the web form and reported the tweet to Twitter.

8 Q. And when you say you reported the tweet to Twitter, for
9 those of us who haven't seen that web form and don't know what
11:59 10 it looks like, could you describe for us what sort of
11 information you had to enter in order to effectuate that
12 report?

13 A. I had to provide my name, email address and a brief
14 description of the reason that I was reporting it and a link to
15 the tweet itself.

16 Q. And what brief description did you provide in this report?

17 A. To the best of my recollection, I explained that the
18 statements regarding the destruction of ballots were false and
19 that the statements attributed to the Massachusetts election
11:59 20 attorney were a misrepresentation of what Attorney Tassinari
21 had said.

22 Q. And then you mentioned you -- I think you said that you
23 provided a link to the tweet that you were reporting; is that
24 right?

25 A. Yes.

1 Q. In your affidavit, paragraph 3, there is a screenshot of
2 the tweet. Can you confirm whether or not that is the tweet
3 that you linked to in your report to Twitter?

4 A. Yes, it is.

5 MS. STERMAN: I'm sorry, Your Honor.

6 THE COURT: You said you used the Department of
7 Election's Twitter account; is that right?

8 THE WITNESS: Yes.

9 THE COURT: I may not be using the right term. How
12:00 10 does somebody know -- would somebody know that the
11 communication came from the Secretary of State's Division of
12 Elections by reading the tweet -- by reading the -- yes,
13 something that came from that account?

14 THE WITNESS: Yes.

15 THE COURT: How would one know that?

16 THE WITNESS: Well, it identifies it as from the
17 Massachusetts Elections Division, and we have also been
18 on-boarded by Twitter to be considered a Twitter partner for
19 reporting this type of information.

12:01 20 THE COURT: What's a Twitter partner?

21 THE WITNESS: It's -- Twitter has our contact
22 information and is aware of our accounts as an election office,
23 so that if we report anything through that portal, then they
24 will take a look at it quickly.

25 THE COURT: So is it a special portal, as you

1 understand it, for election offices?

2 THE WITNESS: No. It's the same portal that everyone
3 else uses. They are just aware of which accounts are election
4 official accounts.

5 THE COURT: I see. And did you say -- when it comes
6 from one of these -- when Twitter sees it comes from an
7 election official, you understand they act on it quickly?

8 THE WITNESS: That is my understanding of what they
9 have said they will do.

12:02 10 THE COURT: And what's that understanding based on?

11 THE WITNESS: Communications from the National
12 Association of Secretaries of State.

13 THE COURT: And did you learn that in some written
14 communication from the National Association or some oral
15 discussion or both?

16 THE WITNESS: I believe it was by email.

17 THE COURT: Do you remember what the email said?

18 THE WITNESS: Well, it provided a presentation
19 regarding how to report the information, how to log in and how
12:03 20 to send the reports.

21 THE COURT: But you said that something caused you to
22 understand that if the Election Division in some way that
23 identified it made a report, you understood Twitter would act
24 on it quickly.

25 THE WITNESS: Yes. I believe at some point in the

1 emails it explained the point of this was so that Twitter could
2 act quickly on election matters.

3 THE COURT: On election matters from election
4 divisions like yours?

5 THE WITNESS: Election officials, yes.

6 THE COURT: And actually -- and this may also be for
7 Ms. Tassinari again. Did you talk to Ms. Tassinari about why
8 she wanted you to send the report?

9 THE WITNESS: I don't recall the entire conversation,
10 but I believe she had asked me to send it because it was
11 obviously false.

12 THE COURT: And did you have any discussion about what
13 Ms. Tassinari or you hoped Twitter would do upon receiving the
14 report?

15 THE WITNESS: No, we didn't.

16 THE COURT: What did you hope Twitter would do upon
17 receiving the report?

18 THE WITNESS: I was hoping that they would remove the
19 single tweet that had misinformation.

12:05 20 THE COURT: And did you expect they would do that?

21 THE WITNESS: I wasn't sure.

22 THE COURT: Did you send that earlier report that
23 Ms. Tassinari referred to?

24 THE WITNESS: Yes, I did.

25 THE COURT: And did you know that Twitter removed that

1 tweet?

2 THE WITNESS: Yes, they informed me later.

3 THE COURT: And did you expect that Twitter would
4 remove this tweet, too?

5 THE WITNESS: I honestly wasn't sure.

6 THE COURT: Why were you unsure?

7 THE WITNESS: Because Twitter was going to have to
8 review it and make their own judgment, and I wasn't sure if
9 they would choose to remove it based on their judgment.

12:06 10 THE COURT: Is it your understanding that they remove
11 false information, clearly false information from -- they
12 remove tweets that contain information that is factually false,
13 demonstrably false, concerning elections if they receive
14 reports from election officials?

15 THE WITNESS: I only have the experience of the one
16 other report, so I really wasn't sure.

17 THE COURT: Okay. I may go back and ask Ms. Tassinari
18 that same line of questions, but Dr. Shiva -- do you
19 remember -- what did you type -- you typed the report?

12:07 20 THE WITNESS: Yes.

21 THE COURT: And what words did you type?

22 THE WITNESS: I don't remember my exact words, but I
23 do remember that I explained that it was false; that we had not
24 destroyed ballots and that the statements he was attributing to
25 Michelle Tassinari were also false.

1 THE COURT: What statement was that?

2 THE WITNESS: I believe the tweet said that a
3 Massachusetts election attorney confirms that the ballots are
4 nowhere to be found.

5 THE COURT: Did you say anything to Ms. Tassinari to
6 the effect of, Why don't we issue our own tweet saying that no
7 ballots had been destroyed and we are in compliance with
8 federal law; we're keeping the paper ballots for 22 months?

9 THE WITNESS: No, I didn't.

12:08 10 THE COURT: Why not?

11 THE WITNESS: Because I don't want to amplify election
12 misinformation.

13 THE COURT: Okay. Dr. Shiva, do you have any
14 questions for Ms. O'Malley?

15 MS. STERMAN: I'm sorry to interrupt, but I do have
16 additional follow-up.

17 THE COURT: I'm sorry, I didn't remember that I had
18 interrupted you. You want to follow up on mine. Go ahead, go
19 ahead.

12:09 20 BY MS. STERMAN:

21 Q. Ms. O'Malley, once you submitted the report that we've
22 just talked about, did you receive any response from Twitter?

23 A. I received an automated response that they would review
24 it, yes.

25 Q. Did you ever receive any further response or communication

1 from Twitter concerning this report?

2 A. No.

3 Q. As you sit here today, do you know what action, if any,
4 Twitter took as the result of your particular report of the
5 plaintiff's tweet?

6 A. No.

7 Q. And you mentioned a few moments ago in response to a
8 question from the judge that the Elections Division is a
9 Twitter partner; is that correct?

12:10 10 A. Yes, yes.

11 Q. And when you say that, what does that mean?

12 A. My understanding is that we are able to select certain
13 reasons for reporting a tweet that may not be available to
14 everyone and that they will -- that the people who review the
15 tweets at Twitter, when complaints are made, will try to act
16 quickly on the ones we report.

17 Q. Does being a Twitter partner afford you or the Elections
18 Division any enhanced access to communications with Twitter
19 about reports that you make?

12:10 20 A. No.

21 Q. Does being a Twitter partner afford you any control or
22 input into action that they take based on your reports?

23 A. No.

24 Q. Aside from the September 24 tweet that you've testified
25 that you reported, have you reported any other of plaintiff's

1 tweets?

2 A. No.

3 Q. Have you -- I'm sorry. Have you reported -- well, let me
4 back up. A little bit ago the plaintiff talked about I think a
5 thread of four tweets that he sent that had displayed somehow
6 emails between himself and Ms. Tassinari. Did you hear that?

7 A. Yes.

8 Q. Did you report any tweets meeting that description?

9 A. No.

12:11 10 MS. STERMAN: Thank you.

11 THE COURT: Let me clarify something. You were
12 asked -- you testified that you didn't know what Twitter did
13 "as a result of my tweet." Is that what you said?

14 THE WITNESS: Correct.

15 THE COURT: Did you know that Twitter removed Dr.
16 Shiva's tweet, the one you complained about?

17 THE WITNESS: I know that they eventually did.

18 THE COURT: When did you learn they removed it?

19 THE WITNESS: I think a few days later.

12:12 20 THE COURT: How did you learn it?

21 THE WITNESS: I believe Michelle Tassinari may have
22 told me.

23 THE COURT: And do you know of anybody else who
24 complained about Dr. Shiva's tweet, anybody else who reported
25 it?

1 THE WITNESS: That specific tweet, I don't know.

2 THE COURT: Well, do you know of anybody who reported
3 any other of Dr. Shiva's tweets?

4 THE WITNESS: I believe someone from the National
5 Association of State Elections Directors may have reported some
6 other tweets.

7 THE COURT: Why do you think that?

8 THE WITNESS: We were in communication with the
9 National Association of State Elections Directors because they
10 assist us in figuring out how to report these tweets.

11 THE COURT: So Ms. Tassinari asked you to report Dr.
12 Shiva's one tweet; is that right?

13 THE WITNESS: Yes.

14 THE COURT: And did you communicate with anybody else
15 before you made the report?

16 THE WITNESS: I don't think I did before I made the
17 report, no.

18 THE COURT: Did you communicate with anybody else
19 after you made the report?

12:13 20 THE WITNESS: I'm not certain if I did, but I believe
21 we alerted NASS and NASED, the National Association of
22 Secretaries of State and the National Association of State
23 Election Directors.

24 THE COURT: Did you do that; did Ms. Tassinari do
25 that?

1 THE WITNESS: I don't believe I did.

2 THE COURT: And what was the communication to the
3 National Association, as you understand it?

4 THE WITNESS: I believe, to the best of my
5 recollection, I believe Michelle emailed, Michelle Tassinari
6 emailed the executive director of the National Association of
7 State Election Directors to let them know that we had reported
8 it because they are our liaison.

9 THE COURT: And you said you believe they may have
10 reported other tweets of Dr. Shiva. Why do you say that?

11 THE WITNESS: I believe it's possible they -- I don't
12 recall entirely, but they may have told -- Michelle Tassinari
13 may have told me. I'm not certain.

14 THE COURT: So Ms. Sterman, let me pick this up with
15 Ms. Tassinari. Can you go off mute, please, Ms. Tassinari.

16 Did you communicate with anybody other than
17 Ms. O'Malley about Dr. Shiva's tweet?

18 THE WITNESS: Yes.

19 THE COURT: With whom?

12:15 20 THE WITNESS: I communicated with Amy Cohen, the
21 Executive Director of the National Association of State
22 Election Directors.

23 THE COURT: And did you communicate with her once or
24 more than once about Dr. Shiva?

25 THE WITNESS: I communicated to her that we were

1 reporting that tweet.

2 THE COURT: Did you do that in writing, orally or
3 both?

4 THE WITNESS: In writing.

5 THE COURT: Once or more than once?

6 THE WITNESS: Once.

7 THE COURT: And what did the writing say?

8 THE WITNESS: We are reporting this to Twitter as
9 election misinformation, with the link to the tweet.

12:16 10 THE DEFENDANT: And did you receive a response from
11 her?

12 THE WITNESS: I don't believe so. I did. I
13 apologize.

14 THE COURT: And are you looking at your emails, which
15 is permissible?

16 THE WITNESS: I am looking at my email. She replied
17 to me later, at 7:22 p.m., to acknowledge that the tweet was
18 still up and said, "Have you reported it? I can report it,
19 too."

12:17 20 THE COURT: And did you respond to that?

21 THE WITNESS: I said Deb had reported it.

22 THE COURT: That's all?

23 THE WITNESS: Deb had reported it. I never got to
24 sending an email, too.

25 THE COURT: I'm sorry, I couldn't hear the second part

1 of that.

2 THE WITNESS: I never got to send a separate email to
3 Twitter, just that we had reported it. Because sometimes you
4 can email it to them, a report as well. We did not do that.
5 We only used the Twitter platform.

6 THE COURT: And did Ms. Cohen communicate with you
7 further about this, or did you communicate with her?

8 THE WITNESS: I believe orally we had a conversation,
9 and she said she had reported it as well.

12:18 10 THE COURT: And what did you say in response to that?

11 THE WITNESS: Okay.

12 THE COURT: You just said okay?

13 THE WITNESS: I acknowledged that -- I probably said
14 thank you.

15 THE COURT: I see. Well, when you asked Ms. O'Malley
16 to file a report with Twitter, what did you hope would happen
17 as a result of that?

18 THE WITNESS: That either the tweet would be removed
19 or labeled as inaccurate.

12:18 20 THE COURT: Excuse me if I asked you this before. But
21 the tweet that -- well, did you ever confirm -- just a second.

22 The tweet that was reported says, "Mass. Election
23 attorney confirms to Shiva4senate ballot images used for
24 counting votes must be saved by federal law for 22 months are
25 nowhere to be found!" Did you ever say that to Dr. Shiva?

1 THE WITNESS: That would imply that I acknowledged
2 that they have to be kept for 22 months or that they ever
3 existed, and the answer to that is no.

4 THE COURT: All right. And was it disturbing to you
5 that he attributed statements to you that you hadn't made?

6 THE WITNESS: Yes.

7 THE COURT: Why is that?

8 THE WITNESS: I take my job as an election
9 administrator and an attorney very seriously, and for someone
10 to suggest that we knowingly violated a federal law relating to
11 elections is not something I take lightly.

12 THE COURT: And is that why you reported this
13 particular tweet and not other related tweets?

14 THE WITNESS: We had only reported this tweet. At the
15 time it was the only one we were aware of.

16 THE COURT: And when you communicated with Ms. Cohen,
17 the Executive Director of the National Association, was it your
18 hope that the National Association also would report the
19 matter?

12:21 20 THE WITNESS: Yes. She is -- the National Association
21 of State Election Directors is also a Twitter partner, and they
22 often coordinate communications between the social media
23 companies and state election directors generally.

24 THE COURT: And was it your hope that a report from
25 the National Association as well as from your office would

1 increase the likelihood that Twitter would either delete the
2 tweet or label it inaccurate?

3 THE WITNESS: I think the goal was generally to ensure
4 that misinformation wasn't being spread, and so whatever
5 actions that we could take to make sure that the tweet was
6 labeled as inaccurate or taken down, we were willing to pursue.

7 THE COURT: But did you think -- you had filed a
8 report. Did you want to do everything possible to try to
9 assure that Twitter would take it seriously and either remove
10 the tweet or label it inaccurate?

11 THE WITNESS: Yes.

12 THE COURT: And were you pleased when they deleted the
13 tweet?

14 THE WITNESS: I believe I saw that it had been
15 removed. I was, yes, I was relieved.

16 THE COURT: Relieved. How did you learn it had been
17 removed?

18 THE WITNESS: I believe the following, later in that
19 weekend I looked and it had been removed.

12:23 20 THE COURT: And why were you relieved?

21 THE WITNESS: Because the spread of misinformation and
22 disinformation relating to the election is a very big concern
23 for myself as well as everyone in this office.

24 THE COURT: And were you relieved because something
25 disparaging for you was no longer on Twitter?

1 THE WITNESS: It didn't mention me by name, so no one
2 would have known it was me personally, so that part is not --
3 that was not my goal. It was actually because of the
4 misinformation about ballots being destroyed and the integrity
5 on the election process.

6 THE COURT: Dr. Shiva, do you have some questions for
7 Ms. O'Malley or as a follow-up to those that I just asked of
8 Ms. Tassinari?

9 MR. AYYADURAI: Yes. Should I -- Your Honor, to not
10 violate process, should I ask Ms. O'Malley first and then
11 Ms. Tassinari?

12 THE COURT: Which way would you prefer?

13 MR. AYYADURAI: I'd like to ask Ms. O'Malley and then
14 Ms. Tassinari.

15 THE COURT: Okay.

16 EXAMINATION BY MR. AYYADURAI:

17 Q. Ms. O'Malley, one of the questions I have is, can you ask
18 why you mention Ms. Tassinari's emails in your complaint but
19 you claimed it was all about that first tweet, that one tweet
12:24 20 only?

21 A. I'm sorry, I don't understand your question.

22 Q. Well, you stated to the court that it was about that one
23 tweet, but in the complaint you've actually mentioned
24 Ms. Michelle Tassinari's emails, the four email interactions.

25 A. I'm sorry, I still don't know what the question is.

1 Q. You just shared with the court that it was all about that
2 one tweet concerning the ballot images being destroyed.
3 However, in your complaint you refer to Ms. Tassinari's emails,
4 the email interactions that I had with Ms. Tassinari, the
5 tweets I put up about those.

6 THE COURT: Maybe I can help. In what complaint?

7 MR. AYYADURAI: In her affidavit.

8 THE COURT: In her affidavit.

9 MR. AYYADURAI: In her affidavit.

12:25 10 THE COURT: Do you understand the question?

11 THE WITNESS: I'm not certain what the question is.

12 BY MR. AYYADURAI:

13 Q. In the complaint to Twitter, the form that you filled out,
14 in the form that you filled out, you said that you only were
15 speaking about that one tweet; is that right?

16 A. Yes.

17 Q. However, in your -- but you also mentioned Ms. Tassinari's
18 emails, is that not right?

19 A. In what?

12:26 20 Q. In your affidavit.

21 THE COURT: Here, you're going to have to do this --

22 Q. Are you familiar with Ms. Tassinari's emails, the email
23 interaction she and I had?

24 A. Yes.

25 Q. Are you familiar with the fact that I shared those emails

1 on Twitter?

2 A. I believe I learned about it later.

3 Q. But you handled Twitter for the Secretary of State, right,
4 for the elections; you're the Twitter person, right?

5 A. Yes.

6 Q. So, given this issue, were you not watching what I was
7 posting on Twitter?

8 A. No, I was not.

9 Q. Okay. But you are aware of those tweets that I posted of
10 my email interactions, sharing the email interactions I had
11 with Ms. Tassinari?

12 A. I believe so.

13 Q. Okay. So you are aware of the tweets that I posted
14 sharing me and Ms. Tassinari's email conversation; you are
15 aware of those tweets?

16 MS. STERMAN: Objection. I think we've been through
17 this a few times now.

18 THE COURT: Yes.

19 MR. AYYADURAI: All right. I just want to bring up
12:27 20 the point of fact, if I can ask Ms. Tassinari, Your Honor?

21 THE COURT: Okay.

22 FURTHER EXAMINATION OF MICHELLE TASSINARI

23 EXAMINATION BY MR. AYYADURAI:

24 Q. Ms. Tassinari, are you aware that the four tweets that I
25 shared with our email interaction were deleted from Twitter?

1 A. Yes.

2 Q. Okay. You have stated to the court that the main tweet
3 that I put up, which was exposing in fact ballot images were
4 destroyed, was deleted. Are you aware that that tweet was
5 never deleted; it's still up?

6 A. I do not know what action Twitter took. I thought it had
7 -- I know tweets had been removed. I don't follow every single
8 one of your tweets.

9 Q. But did you not just assert to the court that this tweet
10 was removed?
12:28

11 A. I thought it had been.

12 Q. Okay. But you do know that the four tweets that I shared
13 with you and I interacting about the ballot images were
14 removed; is that right?

15 A. Yes.

16 MR. AYYADURAI: Okay.

17 THE COURT: Let me ask this. Was the tweet that's
18 copied in the affidavits, paragraph 3 of Ms. O'Malley, was that
19 one removed?

12:29 20 MR. AYYADURAI: No, it wasn't, Your Honor. I'm sorry.
21 That question was to me?

22 THE COURT: Well, Ms. Tassinari, what's your
23 understanding? This is the one that's in paragraph 8 of your
24 affidavit. That's the one that you asked Ms. O'Malley to
25 report on?

1 THE WITNESS: Yes.

2 THE COURT: And when you checked on that Sunday, was
3 that one removed, as you understand it?

4 THE WITNESS: I thought it was, but when I just
5 clicked on the link to it, it is certainly still up.

6 THE COURT: All right. So Dr. Shiva, now I'm asking
7 you for testimony.

8 Are you saying that there were four others that were
9 removed?

12:29 10 MR. AYYADURAI: Yes, Your Honor. So after that tweet,
11 I put up four tweets, which were the email interactions
12 substantiating my position that Michelle Tassinari's office or
13 the Secretary of State's Office was violating federal law,
14 which was the email interaction between myself and Michelle
15 Tassinari, which was the screenshots. Those were the ones that
16 were removed because those emails exposed Secretary of State
17 Galvin as violating federal law.

18 THE COURT: Do I have those in evidence before me?

19 MR. AYYADURAI: I don't -- I don't have the tweets,
12:30 20 but I explained them in the verified complaint.

21 THE COURT: All right. I'll have to ponder the
22 implications of that. Okay. Are there any more questions for
23 these two witnesses?

24 All right. Now, Mr. Hornstine -- no, there are not.
25 It's now 12:30, but I'd like to get through this argument if we

1 can. And the stenographer should tell me if she would like a
2 break. She's okay. She runs marathons.

3 MR. HORNSTINE: Unless she was pointing her thumb up
4 to say she did need a break.

5 THE COURT: No, she wasn't.

6 MR. HORNSTINE: Okay. Very good, Your Honor. We'll
7 keep going.

8 THE COURT: Okay. So that testimony is relevant to
9 what I'll call the *Blum* issue. But why don't you resume your
10 argument, please.

11 MR. HORNSTINE: Why don't we jump right in with the
12 *Blum* issue then. I know that plaintiff here contends that the
13 gravitas of the Secretary's Office caused Twitter to act here,
14 but what this testimony we've just revealed is it's quite the
15 opposite.

16 The Secretary's Office complained about a single
17 tweet. Twitter forced plaintiff to delete four other tweets
18 that the Secretary's Office did not complain about. So it
19 certainly undercuts the argument that the Secretary's voice was
12:32 20 so coercive or so significant to Twitter that Twitter acted at
21 its behest in deleting the four tweets that are not in the
22 record but that plaintiff characterizes in his complaint.

23 This certainly buttresses the Secretary's position
24 that this isn't an instance where it can be held to account for
25 the private decision of a private actor operating under its own

1 terms of use, under its own civic policies. And where, as
2 here, it is crystal clear that the Secretary didn't complain
3 about the four tweets that were deleted and that apparently
4 resulted in his suspension, *Blum* might not even be the actual
5 inquiry. It may be just a simple matter of causation here,
6 Your Honor.

7 THE COURT: Well, again, I have to draw reasonable
8 inferences. I now know that not only did Secretary Galvin's
9 office report this complaint about it, but it was through an
10 account that they and their colleagues around the country had
11 been assured would get priority attention and that the
12 executive director of the national organization, as Secretary
13 Galvin hoped, also filed a report, and the hope was that the
14 tweet would be deleted.

15 MR. HORNSTINE: Which it wasn't.

16 THE COURT: Four others were, and there's no evidence
17 that there's any other reason the others were deleted. Dr.
18 Shiva was apparently put on Twitter's radar screen, and they
19 removed four of his tweets. This --

12:34 20 MR. HORNSTINE: Which again is -- go ahead.

21 THE COURT: No, go ahead.

22 MR. HORNSTINE: I was just going to say, which is
23 Twitter's prerogative to do under its terms of service, which
24 makes clear that any discipline Twitter metes out is Twitter's
25 decision and Twitter's alone to make.

1 THE COURT: When you say it makes it very clear, my
2 law clerks, I tell them, "Don't ever say 'clearly' this,"
3 because it usually obscures this. Twitter can say its
4 Twitter's own decision, but in certain circumstances it
5 constitutes state action. I mean, there are just certain
6 circumstances where it's not treated as a matter of law as
7 Twitter's decision alone. There's a factual element to that.

8 MR. HORNSTINE: And I appreciate that legal
9 distinction, Your Honor, and I will resist the temptation to
10 use the adjectives "very" and "clear."

11 But the terms of use again are posted online that
12 every user agrees to, and I think again the Kentucky decision
13 talks about this, the concept that there is no free speech on
14 Twitter; it's whatever Twitter lets you do. Because as a user,
15 you agree as a contractual matter to be bound by certain terms
16 of use, and if you violate those terms of use -- and again,
17 let's keep in mind that any citizen can lodge a complaint, or
18 any Twitter user I should say can lodge a complaint with
19 Twitter and Twitter can investigate it.

12:35 20 Even if the Secretary's Office has some special status
21 that will get its complaint's attention, the fact remains that
22 the tweet the Secretary's Office complained about as election
23 misinformation was not deleted and, again, apparently was not
24 the source of the Twitter suspension here. I don't hear any
25 evidence --

1 THE COURT: When you talk about the Kentucky decision,
2 is that *Morgan v. Bevin*?

3 MR. HORNSTINE: Correct. The decision involving
4 Governor Bevin. In that case, the case involved an issue in
5 which the governor was muting people on his social media
6 account. So in other words, users could post comments to his
7 Facebook post, to his tweets. I forget which social media
8 platform it was, I apologize. And the governor didn't like
9 certain comments that were being posted on his page, so he
10 blocked people from posting on Twitter, posting on his social
11 media account.

12 THE COURT: On his page. And this relates to what I
13 wrote about in *Baptiste* and also the *St. Patrick's Day Parade*
14 case. It's compelled speech. I confess I haven't read this
15 yet. But the idea, if it's his page, you know, one can control
16 the messages on your page, but that can be different than
17 deleting it from the Twitter universe.

18 MR. HORNSTINE: Well, let's be clear here. There's
19 actually a split of authority, if you will. In the Kentucky
12:37 20 case, *Morgan v. Bevin* case, it essentially comes out where Your
21 Honor was headed. But there's a case from the Second Circuit,
22 *Knight v. Trump*, where the prison was doing the same thing,
23 muting things posted to his page.

24 There's a Fourth Circuit case, *Davison*, again banning
25 someone from the interactive portions of a government social

1 media page. And in those two latter cases, the Fourth Circuit
2 decision and the Second Circuit decision, the courts held that
3 political leaders couldn't do that, but both of those decisions
4 made clear that any posts that the government made, so the
5 Presidents' tweets, the governor's tweets or Facebook posts,
6 were indisputably government speech.

7 THE COURT: Hold on just a second. What's the Fourth
8 Circuit case?

9 MR. HORNSTINE: It is *Davison*. I apologize, Your
10 Honor. I can pull up --

11 THE COURT: I have it. What I don't have is my law
12 clerk.

13 MR. HORNSTINE: Yes.

14 THE COURT: Anyway.

15 MR. HORNSTINE: And the other case I would call the
16 court's attention to is the First Circuit's *Sutcliffe* decision,
17 in which the government refused to put certain hyperlinks that
18 the government's opponents wanted to appear on a particular
19 website.

12:39 20 And in all of those cases, what they make clear is
21 that the government speech -- and again, I've given or at least
22 cases give examples of what constitutes government's speech --
23 is not subject to First Amendment regulation. I know the court
24 has asked the question --

25 THE COURT: I know that. That's *Rosenberger*. It was

1 implicated in a case you cited of mine, *Griswold v. Driscoll*.

2 MR. HORNSTINE: Yes.

3 THE COURT: But there are certain governments -- when
4 you're in the area involving *Blum*, in effect speech can become
5 action. And this really goes to it. And we're in a new world.
6 I'm sitting here under a portrait of Louie Brandeis. The
7 seminal views of Holmes and Brandeis were the bedrock principle
8 of the First Amendment, at least used to be. The answer to bad
9 speech is better speech.

10 And it's striking to me, and I'll have to think --
11 although I don't have much time to think about it.

12 Ms. Tassinari said it never occurred to me to just tweet out
13 what Dr. Shiva is saying is false. I mean, if there's state
14 action here, that, in my current conception, would be a
15 narrowly tailored way of advancing the compelling interests.

16 And there's a whole line of cases. Political speech
17 deserves the most protection. The man is a candidate for
18 public office. And just by saying it's false -- we wouldn't be
19 here if the response had been a tweet that said, you know,
20 whatever the statute is, X U.S. Code, Section Y says you have
21 to keep paper ballots for 22 years. We have them. It's false.

22 And then people thinking about whether they should
23 vote for Dr. Shiva would say, Wait a minute, he's not a
24 credible person; I don't want to vote for him. But instead
25 of -- the First Amendment, except in limited categories, like

1 for defamation, protects false speech as well as speech that
2 describes things accurately. This is basic First Amendment
3 jurisprudence in a new age. Anyway, interesting.

4 MR. HORNSTINE: I agree that it's very interesting,
5 and I think some of the newer cases -- again, I've given you a
6 few of them, the *Morgan* case, the *Sutcliffe* case, the *Davison*
7 case, there's an Eastern District of California case, *Faison*
8 case -- deal with sort of how to address speech in the modern
9 age.

12:42 10 THE COURT: Which of these cases doesn't involve
11 somebody's own web page? I mean, this is what I just wrote in
12 *Baptiste*. I found that the Commonwealth's regulation requiring
13 landlords to inform tenants of adversary groups that would
14 oppose landlords was probably unconstitutional. It was a
15 preliminary injunction.

16 That, I get. And I don't have a Facebook a page, but
17 if somebody makes a Facebook page, they should be able to
18 control what's on it because it's their message, it's their
19 page. And there are other avenues. Somebody else can have
12:42 20 their own Facebook page. So, I get that.

21 But here, you know, Twitter is like -- I don't know --
22 like a megaphone. It amplifies, broadcasts somebody's message,
23 but it's his message. And my current conception is that the
24 government couldn't censor that. And the fundamental issue is
25 is he reasonably likely to prove that there was a sufficient

1 connection between what the Secretary did in Twitter's conduct
2 to make Twitter's conduct state action under that *Blum* line of
3 cases.

4 MR. HORNSTINE: And if that is the fundamental
5 question here, I think it's critical that we realize that
6 Twitter didn't do what the Secretary's Office asked it to do.
7 That tweet, as we just heard, that the Secretary's Office
8 complained about is still on plaintiff's Twitter page.

9 So again, all due respect to the gravitas of my
10 client, I'm not sure that the Secretary coerced Twitter into
11 doing its bidding here, as he contends. Quite the opposite.
12 He may well have been suspended. He may well have been forced
13 to delete certain tweets, but not the one that the Secretary's
14 Office complained about, Your Honor.

15 THE COURT: Well, suspension is another form of
16 serious First Amendment concern. A suspension is a prior
17 restraint. If I understand it, the way Dr. Shiva explained it
18 to me, and tell me if I'm wrong, as a matter of fact, anybody
19 much younger than me would know. He said he was suspended,
12:46 20 that he wasn't allowed to tweet anything for seven days.

21 So let's say he wanted to tweet, "I'm a republican
22 candidate, and I support Donald Trump," or, "I'm a republican
23 candidate and I support Joseph Biden." It's political speech.
24 He was prohibited from saying that on Twitter, right; is that
25 right?

1 MR. HORNSTINE: That is what he alleged. He alleges
2 that he was suspended. But again, these are all good questions
3 to be asking. Again, we have one instance in which the
4 Secretary's Office lodged a complaint with Twitter, a private
5 organization, and he alleges that he has been suspended.

6 THE COURT: Well, there are two, they did it one other
7 time.

8 MR. HORNSTINE: That was with respect to another
9 incident.

12:46 10 THE COURT: Another person.

11 MR. HORNSTINE: Another person, correct. I'm just
12 talking about this plaintiff here. I apologize. And he was
13 then unsuspended and then since that time has been suspended
14 two other times.

15 THE COURT: Because he keeps putting up tweets that
16 the defendant finds offensive.

17 MR. HORNSTINE: No, no. The four tweets that the
18 Secretary's Office did not complain about -- again, but that's
19 what he -- we're making a lot of assumptions here on this thin
12:46 20 record, right?

21 He has claimed, as I understand it, and plaintiff can
22 correct me if I'm wrong, that every time he reposts the four
23 tweets that he deleted or that he was required to delete by
24 Twitter, again four that the Secretary's Office did not
25 complain about, his suspension kicks back into effect.

1 So again, how that is chargeable to the Secretary for
2 tweets it did not complain about seems to stretch it a little
3 too thin, even if we are required to make certain inferences in
4 his favor at this preliminary stage.

5 THE COURT: And what do we understand those tweets
6 say, his emails back and forth with Ms. Tassinari?

7 MR. HORNSTINE: The four tweets that he claims he was
8 required to delete are not in the record. He characterizes
9 them in his complaint in here as emails between himself and
12:47 10 Ms. Tassinari. I believe -- I don't know -- this is again
11 something that he can clarify. We have attached to
12 Ms. Tassinari's email some of the email traffic between
13 plaintiff and Ms. Tassinari. The substance of those emails is
14 in the record.

15 THE COURT: Hold on just a second. So these are part
16 of docket number 15-2, Ms. Tassinari's --

17 MR. HORNSTINE: There should be two emails with some
18 attachments.

19 THE COURT: I see the two, I do. Let me ask Dr.
12:48 20 Shiva, are these the emails you say you tweeted?

21 MR. AYYADURAI: That affidavit is missing the fourth
22 email, Your Honor. It's those three plus a fourth one, which
23 is missing.

24 THE COURT: Okay. Three of the four are in the
25 record.

1 MR. AYYADURAI: Three of the four emails. And I would
2 just like to, if this is appropriate, Your Honor --

3 THE COURT: Not yet, not yet. You'll get your chance.

4 MR. AYYADURAI: Okay. Thank you.

5 THE COURT: Although we're going to have to take a
6 break pretty soon. Why don't you continue, Mr. Hornstine.

7 MR. HORNSTINE: I don't know where we had left off.
8 The only thing I was going to say is, again, those four tweets
9 are not in the record. We do have, at least according to
10 plaintiff's telling, three out of the four emails appended to
11 Ms. Tassinari's affidavit.

12 But again, the point remains, Your Honor, that the
13 Secretary's Office didn't complain about that. I'm not sure
14 how it is chargeable for a suspension that apparently resulted
15 from something they didn't do.

16 THE COURT: All right. I understand that argument.

17 MR. HORNSTINE: Very good. Again, I'm mindful that we
18 don't want to torture the court reporter, but unless the court
19 has any other questions on this issue, I'm happy to turn to
20 Eleventh Amendment or mootness.

21 THE COURT: Go ahead.

22 MR. HORNSTINE: Very well. I'll start with mootness,
23 since I know the court's order from yesterday wanted to talk
24 about voluntary cessation.

25 Again, we have testimony here today that the

1 Secretary's Office lodged a single complaint more than a month
2 ago and that it has not reported plaintiff's tweets to Twitter
3 since then. And we started with this question, or Your Honor
4 started with this question about what is the relief that is
5 being sought, which is an injunction essentially between now
6 and next Tuesday to prevent the Secretary's Office from making
7 additional reports to Twitter.

8 And we know from plaintiff's testimony that at least
9 several of those days he is under Twitter suspension, so he
10 cannot be posting additional tweets to Twitter, true, false,
11 misleading or otherwise. It seems that this may be a case that
12 is potentially moot. And, you know, the --

13 THE COURT: Let me ask you -- I'm sorry.

14 MR. HORNSTINE: Please.

15 THE COURT: Because this could cut through some of
16 this. Although Twitter is not a party, if I were to find for
17 present purposes -- and anything I find now is preliminary --
18 that what Twitter did is likely state action, if I issued a
19 TRO, it would run to anybody acting in concert with the
20 Secretary. That would include Twitter.

21 And this again came up in *Baptiste*, and I wrote about
22 it there, and I've written about it before. If I'm told, one,
23 if I were to say, in effect, I'll issue a TRO if necessary to
24 say there shall be no more reports of Dr. Shiva before November
25 4th --

1 MR. HORNSTINE: November 3rd, Your Honor.

2 THE COURT: November 3rd is the election. That's why
3 I picked the 4th. I know he was saying the 4th.

4 MR. HORNSTINE: I understand.

5 THE COURT: You can point that out. See, he's a
6 candidate. He doesn't even know what day is Election Day.
7 This is the marketplace of ideas. So I'd say the 4th because
8 people can be voting until 8:00 or something on the 3rd.

9 Then if I was told today, soon, we agree to that, we
10 won't do this again, and then this all can get -- you know,
11 either the case will be over or it will be moot. And the only
12 question might be whether I should issue a TRO that might
13 require Twitter to unsuspend him.

14 But I mean, that's something -- finish, but this is
15 it. I mean, these are questions of comity. This is Federal
16 Court. This was an issue right up front in *Baptiste*. I asked
17 them at the first hearing, you know, if I issue a declaratory
18 judgment on preliminary injunction, will you follow it or will
19 I need to issue an injunction? And they said, We'll follow it,
12:53 20 and they did. Even though it was just a ruling on a
21 preliminary injunction, the regulation was changed, amended to
22 remove the offense in part.

23 So, anyway. On the other hand, I think it's
24 foreseeable -- he's suspended, but at some point between now
25 and Tuesday he may well tweet about this hearing and maybe

1 he'll characterize it falsely. Maybe he'll mischaracterize
2 what I have said so far or what I say in any decision I render.

3 And then, you know, if there's the threat that he'll
4 get reported again, he'll get suspended again for that, and
5 there won't be the opportunity to litigate this, to spend
6 another couple of days on this issue before the election date
7 that's very important to him, then I would think you haven't
8 demonstrated the case as moot because in your memo you say he
9 hasn't proven it's going to recur, but the Supreme Court says
10 the burden is on the defendant here to show it's not likely to
11 recur.

12 MR. HORNSTINE: If we're talking about mootness, I
13 agree on the burden issue. On the Eleventh Amendment issue, I
14 do believe it is his burden to show some likelihood of future
15 violations that can be enjoined. Although the issue is
16 similar, I think the burden is different.

17 THE COURT: Why do you -- I need to understand your
18 Eleventh Amendment argument on this a little better.

19 MR. HORNSTINE: Okay. So I think we've already talked
12:55 20 about *Pennhurst*, no state law claims, *Quern*, no damages. I
21 think the only real issue is whether or not this court has the
22 ability under the Eleventh Amendment to issue a prospective *Ex*
23 *Parte Young* type injunction on a forward-going basis for
24 something that has occurred in the past.

25 And the First Circuit's decision in *Hootstein*, which

1 we cite which --

2 THE COURT: Which case is that?

3 MR. HORNSTINE: *Hootstein*. H-o-o-t-s-t-e-i-n, I
4 believe is the spelling, Your Honor. It was a case involving
5 DCF and child custody.

6 THE COURT: Hold on just a second.

7 MR. HORNSTINE: Of course.

8 THE COURT: What is the citation, please?

9 MR. HORNSTINE: I'm pulling that up, if you'll give me
12:56 10 just one moment, Your Honor. Excuse me, I may have said it's a
11 First Circuit case. I apologize. It's a D. Mass. case. The
12 citation is 670 Federal Supplement 2d 110, *Hootstein v.*
13 *Collins*.

14 THE COURT: All right. My law clerks in the other
15 room when we break will -- I don't have it.

16 MR. HORNSTINE: That case in turn, Your Honor may have
17 it. It's a Supreme Court case from 1986. It's *Papasan*,
18 P-a-p-a-s-a-n, which citation is 478 U.S. 265.

19 THE COURT: I do have that. Just a minute. What's
12:57 20 the pertinent page?

21 MR. HORNSTINE: The pertinent pin site from *Papasan* is
22 277-278. And the quote, I'll read it --

23 THE COURT: Let me get it.

24 MR. HORNSTINE: I apologize. I'm ahead of you. I
25 apologize. We talk about this at pages 8 and 9 of the

1 defendant's brief.

2 THE COURT: What is the pertinent quote?

3 MR. HORNSTINE: The pertinent quote from the *Papasan*
4 case is, "*Young* has been focused on cases in which a violation
5 of federal law by a state official is ongoing as opposed to
6 cases in which federal law has been violated at one time or
7 over a period of time in the past."

8 The *Hootstein* case, which I know Your Honor doesn't
9 have, the pertinent quote from it -- this is again on page 9 of
10:58 10 our brief. "The *Ex Parte Young* doctrine then only allows
11 federal courts to exercise jurisdiction over a suit in which
12 the plaintiff alleges ongoing violations of federal law. Suits
13 that seek redress of past wrongs are still barred by the
14 Eleventh Amendment."

15 THE COURT: All right. So actually it seems to me
16 that that goes to a point I was just raising and may affect
17 what I just said off the top of my head. I said I could issue
18 an order, a TRO, to the Secretary and all acting in concert
19 with him that would require Twitter to unsuspend the defendant.
12:59 20 However, maybe I can't do that under this doctrine.

21 If I'm concerned -- if the requirements are met, I
22 might not find this is moot because I don't have an assurance
23 that between now and next Wednesday Dr. Shiva won't be reported
24 again or reported again without coming to me.

25 MR. HORNSTINE: Reported again by whom, let me ask you

1 that, Your Honor.

2 THE COURT: Well, by the Secretary.

3 MR. HORNSTINE: As Your Honor well knows, we can't
4 tell Twitter to do much of anything.

5 THE COURT: No. Okay. But it won't be reported again
6 by the Secretary at least. If I had that assurance and the
7 Secretary -- if he says something that the Secretary thinks is
8 false and you think is harmful to the integrity of the election
9 process and public confidence in it, you say, That's false. We
01:00 10 didn't destroy any ballots. Federal law doesn't require us to
11 make images of this.

12 I mean, that would have been the answer a number of
13 years ago. But, okay. So I'm going to have to focus on this a
14 little bit.

15 MR. HORNSTINE: Your Honor, again, I'm mindful of the
16 hour. If it is worthwhile -- and again, this gets back to a
17 point from our affidavits yesterday, we've never really met and
18 conferred on this motion. If the court wants me to, and the
19 court asked us to have somebody with authority appear on this
01:01 20 call --

21 THE COURT: Who is that?

22 MR. HORNSTINE: Ms. Tassinari.

23 THE COURT: So she has authority --

24 MR. HORNSTINE: I'm happy to talk with my client
25 offline, and we can address this if the court wants after the

1 break. Would that be a useful use of our time?

2 THE COURT: Yes, yes. And you can also talk to Dr.
3 Shiva. I mean, I kind of skipped over that. The meet and
4 confer is very important.

5 If this case goes on, Dr. Shiva, you have to follow
6 the rules, and I'm not surprised you're an intelligent person,
7 given your employment at MIT, among other things. But, you
8 know, you've got a reasonable understanding of certain
9 principles, and you're entitled to represent yourself. I think
01:02 10 you're doing a good job. But you're going to have to read the
11 rules and follow them because some of these issues, when
12 lawyers talk at least, you know, they reach an accommodation
13 and they don't have to be litigated this intensely.

14 So I think this is a good idea. It's 1:00. I think
15 that the defendants should talk. Mr. Hornstine, talk to your
16 client, see if there's some kind of representation you want
17 to --

18 MR. HORNSTINE: Yes, Your Honor.

19 THE COURT: And Dr. Shiva, do you object to giving
01:03 20 them your phone number, or maybe they have your email address.
21 You can email it to them.

22 MR. HORNSTINE: I have plaintiff's email address, Your
23 Honor.

24 THE COURT: It may be they'll want to talk to you
25 before this is over, before about 1:45. But what they might

1 want to talk to you about is -- I think you understand me, but
2 let me just tell you all my tentative thinking to be as
3 transparent as possible because your interest, Dr. Shiva, as I
4 understand it, is being able to tweet before the election at
5 least without interference, as you would call it, from the
6 Secretary of State; is that right?

7 MR. AYYADURAI: Yes, Your Honor. And also, if I could
8 add one thing. I've come to find out today that the Secretary
9 of State has special privilege in communicating with Twitter,
01:04 10 particularly through the National Association of Secretaries of
11 State, which is frankly a little bit alarming to me. And I
12 also want to make one point. In Ms. O'Malley's comments she
13 said in her complaint she also referred to those emails. I
14 just want to make a point of fact for my notes.

15 THE COURT: But here, your interest is getting back on
16 Twitter as soon as possible before the election, correct?

17 MR. AYYADURAI: Yes, yes, Your Honor, it is my
18 platform.

19 THE COURT: And your understanding is that you're
01:04 20 suspended until tomorrow or maybe Sunday, right?

21 MR. AYYADURAI: Yes, yes.

22 THE COURT: And this is good, too, Mr. Hornstine,
23 because if the Secretary of State is going to make certain
24 representations, you'd have to tell the National Association --
25 you know, if you tell me, We're not going to report him, you'll

1 you probably need to tell me also you'll ask the National
2 Association not to report him.

3 MR. HORNSTINE: I will address the issues with my
4 client during the break. If it pleases the court, not only are
5 we mindful about plaintiff's candidacy, but both Ms. Tassinari
6 and Ms. O'Malley also have to run a general election for the
7 state. Does the court need them to appear this afternoon?

8 THE COURT: Yes.

9 MR. HORNSTINE: If so --

01:05 10 THE COURT: But it won't be that long. Well, they'll
11 need to hear my decision, because I'm going to hear from you,
12 and I'm going to give you a decision this afternoon. But let
13 me tell you what my present thoughts are.

14 MR. HORNSTINE: Thank you, Your Honor.

15 THE COURT: Because this may obviate it, the need to
16 decide. So here are my thoughts. Even though service hasn't
17 been perfected, the defendant has had notice. And I have the
18 authority to issue a temporary restraining order. It could
19 have been done in certain circumstances without notice under
01:06 20 Rule 65. The import of *Will* is when the issue is prospective
21 injunctive relief, section 1983 provides a remedy for
22 violations of constitutional rights, including First Amendment
23 rights in cases against a state official acting in his official
24 capacity. So that authority exists under footnote 10 of *Will*
25 and a number of other cases.

1 The testimony I heard, which I believe is candid and
2 credible, was also helpful because it amplifies the affidavits
3 which say there was a report. The closest issue in my mind,
4 and it's closer than it was based solely on the papers, is
5 whether what I'll call the *Blum* test for converting Twitter's
6 action into state action is met, or, to be more precise,
7 whether it will probably be proven. Because now we do know
8 that Twitter gives high priority to reviewing reports or
9 complaints from election officials and acts on them quickly,
01:08 10 and they acted on Dr. Shiva's account, as I understand it,
11 quickly after getting the report from the Secretary here and
12 also from the National Association.

13 So it may be probable that he will ultimately prove
14 that state action is involved here. If state action is
15 involved here, then it appears to me probable that he will
16 prove that his First Amendment rights have been violated.

17 I understand that the government can control its own
18 speech under *Rosenberger*, but I think that doesn't mean it can,
19 in concert with somebody else, censor speech, particularly
01:09 20 political speech. This would be a content-based regulation
21 subject to strict scrutiny, which requires the government to
22 demonstrate a compelling interest in narrow tailoring to
23 achieve its interests, as the First Circuit said in *Rideout*,
24 837 F.3d 65, 71.

25 And there would be a particular problem here because

1 Dr. Shiva's account was suspended, which arguably is a form of
2 a prior restraint on his ability to speak. And prior
3 restraints, it's the Pentagon papers case, *New York Times v.*
4 *United States*, et cetera, you know, prior restraints are almost
5 always invalid.

6 So then there would be a question, though, as to
7 whether there is a continuing violation. And I understand the
8 argument better now. But this is going to depend a little bit.
9 But this also merges with the *Already* doctrine that I discussed
01:11 10 with you.

11 Even if there's not a continuing violation, is there a
12 sufficient likelihood that the issue will arise again and not
13 be capable of being litigated and resolved in a timely way.
14 And that may be, and I'd have to think about the interaction of
15 those two doctrines.

16 But again, if the Secretary of State is prepared to
17 represent that it won't file any more reports at least until
18 after the election and that it will ask the National
19 Association not to file reports, and that if it believes Dr.
01:11 20 Shiva has said something false, it will use its own Twitter
21 account in a non-defamatory way to answer false speech with
22 true speech and expect that it will prevail in the marketplace
23 of ideas, which perhaps is an antique notion, but it's one I've
24 believed in deeply.

25 So that's my present thinking. And Dr. Shiva, if they

1 do make that kind of representation and then you can get back
2 to Twitter on Sunday, whenever it will be, after tomorrow, I
3 will either find -- and you might agree to this. You should
4 see -- if they offer you that and you're agreeable, then you
5 can go back to campaigning. Because, unfortunately, you want
6 to be campaigning. They want to be preparing for this very
7 consequential and challenging election. And then after the
8 election, you all will confer and tell me whether the case is
9 over or whether in some deliberate fashion it can be litigated.

01:13 10 Okay? Do you think you understand that?

11 MR. AYYADURAI: Yes, Your Honor. May I just repeat
12 what you just shared?

13 THE COURT: Not all of it.

14 MR. AYYADURAI: Just the three points. The three
15 points you said was that, if the Secretary of State can make a
16 representation they will no more file reports with Twitter;
17 two, they will also ask the National Association not to
18 interfere; and they will also use their own Twitter account if
19 they differ with me in the marketplace of ideas.

01:13 20 THE COURT: That's what I'm suggesting.

21 MR. AYYADURAI: I can agree to that. Obviously there
22 has to be written assurances. I'm fine with that.

23 THE COURT: Well, now you know -- let's do this before
24 I faint with hunger. Do you want to take a few minutes with
25 your clients? It may be that we can resolve this soon, and

1 they can get back to their important work.

2 MR. HORNSTINE: I think that would be very useful.
3 I'm mindful that my client's witnesses have a 2:30 election
4 security call with some federal officials.

5 THE COURT: Here. It's 1:15. We can put you all in a
6 breakout room.

7 MR. HORNSTINE: As long as it is a secure breakout
8 room.

9 THE COURT: It's secure. It will be entirely
01:14 10 privileged conversations.

11 MR. HORNSTINE: Very good.

12 THE COURT: You'll tell Ms. Loret when you're ready to
13 come back.

14 MR. HORNSTINE: And how is the best way for me to
15 contact Ms. Loret?

16 COURTROOM CLERK: You can just send me an email.

17 MR. HORNSTINE: Very good. I have your email address.

18 THE COURT: Then I'd like you, please, Ms. Loret, to
19 put my staff and me and the court reporter in another breakout
01:15 20 room. But set up theirs first, please.

21 COURTROOM CLERK: Yes.

22 MR. HORNSTINE: Thank you, Your Honor. We will revert
23 and hopefully you can get a snack while we do that.

24 THE COURT: I'm going to be talking to my clerks, but
25 thank you.

1 MR. AYYADURAI: Your Honor, do I just stay here?

2 THE COURT: Yes.

3 MR. AYYADURAI: Okay.

4 (Recess taken 1:15 p.m. - 1:32 p.m.)

5 THE COURT: Okay. Let's see. There's Dr. Shiva. I
6 don't see him, but he appears to be there. Dr. Shiva, are you
7 on?

8 COURTROOM CLERK: He's on the call.

9 THE COURT: He's on mute and I can't see him, so he
01:32 10 may not be available.

11 COURTROOM CLERK: Let me try to get in touch with him.

12 MR. AYYADURAI: I'm sorry, Your Honor.

13 THE COURT: Okay. Mr. Hornstine, what do you have to
14 report?

15 MR. HORNSTINE: Yes, Your Honor. First of all, thank
16 you for the opportunity to speak with the representatives from
17 the Secretary's Office. They will agree as follows:

18 That, first, that they will or that the Secretary's
19 Office will not make any reports to Twitter concerning
01:33 20 plaintiff's Twitter accounts between now, and just to put a
21 time on it specifically, 9:00 a.m. the day after Election Day,
22 so that would be Wednesday, November 4th; that we will, upon
23 conclusion of today's proceedings, email NASED, National
24 Association of State Election Directors, and instruct them not
25 to do the same for the same period of time.

1 And if the court wishes to set a status conference for
2 sometime after Election Day, we would be happy to do that.

3 THE COURT: Couple of things.

4 MR. HORNSTINE: And on that basis, Your Honor, we
5 believe that the motion should be denied without prejudice as
6 moot.

7 THE COURT: Okay. Dr. Shiva, is that still
8 acceptable?

9 MR. AYYADURAI: Your Honor, if I can just review, I
01:34 10 believe there's one point that's missing and one clarification,
11 if I may?

12 THE COURT: Yes.

13 MR. AYYADURAI: It is -- the first one is fine, which
14 is that they represent that they will no longer report me to
15 Twitter until 9:00 a.m. November 4th.

16 The second is, it's not only the National Association
17 of Election Directors but it's also the National Association of
18 Secretaries of State. There are two organizations that are
19 involved here. So I just want to clarify that.

01:35 20 And the third point I believe you made was that they
21 will, if they have a difference with me on this matter, that
22 they will raise the objections on Twitter. They will not as a
23 part of --

24 THE COURT: They will not what?

25 MR. AYYADURAI: They will raise their objections of

1 anything that I tweet out on Twitter, on social media.

2 THE COURT: That they can?

3 MR. AYYADURAI: They can, yeah. I'm not here to
4 restrict their speech, but if they have a difference, I believe
5 you stated that they should go to --

6 THE COURT: Well, here. Let me ask the following.
7 You said you would email NASED. Does Ms. Tassinari hold an
8 office in that organization?

9 MR. HORNSTINE: She can answer that question. I'll
01:35 10 let her speak for herself.

11 MS. TASSINARI: I'm the president-elect of the
12 National Association of State Election Directors.

13 THE COURT: Then the executive director will be under
14 you.

15 MS. TASSINARI: Typically she's reporting to the
16 president of the association, but I can certainly send an email
17 that will include the president on that.

18 THE COURT: I think it would be prudent so we don't
19 end up back here as a result of any misunderstandings, if you
01:36 20 talk to them as well. Send them an email promptly. You've got
21 other things to do.

22 MS. TASSINARI: I certainly can. The president of the
23 National Association of State Election Directors is in
24 Washington State, so it's a three-hour difference. Again, we
25 are all preparing for a huge election, so I don't know that

1 I'll be able to communicate with them.

2 THE COURT: I had in mind you would call the executive
3 director. I just think it's prudent. But you'll communicate
4 with them.

5 MR. HORNSTINE: And Your Honor, just one
6 clarification. I know plaintiff was asking about the National
7 Association of Secretaries of State. My client had no contact
8 with NASS about plaintiff's tweets, is my understanding, so
9 there would be nothing for us to instruct them not to do, or
01:37 10 there would be nothing for us to undo vis-à-vis NASS.

11 THE COURT: Dr. Shiva, is that agreeable?

12 MR. AYYADURAI: That's fine. I was under the
13 understanding, I heard National Association of Secretaries of
14 State and --

15 THE COURT: Here is what I'm going to do. I'm going
16 to issue an order that says, "In connection with the hearing on
17 the motion for temporary restraining order, the parties have
18 agreed, one, that the Secretary, the defendant, Secretary of
19 State will not report any tweets or complain about any tweets
01:38 20 by Dr. Shiva again before 9:00 a.m. on November 4th.

21 "Two, the Secretary of State will" -- Ms. Tassinari
22 said "direct," if that word is okay, I'll say "direct." I
23 might say "ask" -- "ask the National Association of" -- what's
24 the name of it? National Association of Election Directors?

25 MR. AYYADURAI: We can't hear you, Adam.

1 THE COURT: National Association of what?

2 MS. TASSINARI: State Election Directors.

3 THE COURT: -- "not to report to Twitter any tweets
4 before 9:00 a.m., that the defendant is free to respond to any
5 tweets by Dr. Shiva by Twitter if it chooses to do so. As
6 agreed by the parties, the motion for temporary restraining
7 order is therefore moot. This case is stayed."

8 And I would say, you know, catch your breath. I'll
9 give you a date like November 10th or 11th or 12th to confer
01:39 10 and tell me whether the plaintiff wishes to dismiss the case
11 and, if not, how each side proposes it proceed. I don't think
12 I'd want to do a motion for preliminary injunction. I'd
13 probably want expedited discovery and consolidate the trial on
14 the merits with a hearing on preliminary injunction.

15 But it sounds to me, particularly going back to the
16 very first thing that Dr. Shiva said in response to my question
17 of what relief, that maybe this case will be over after the
18 election. Okay?

19 And I think this is a constructive resolution, and
01:40 20 it's good that you could reach an agreement, and the
21 representatives of the Secretary of State can get back to their
22 important work, and Dr. Shiva can get back to the role he's
23 playing in our democracy.

24 Is there anything further in this matter for today?

25 MR. AYYADURAI: No, Your Honor. Thank you.

1 THE COURT: All right. You may want to -- you can
2 decide whether you want to order the transcript of this
3 hearing. If there are going to be further proceedings in this
4 case, it will be necessary for you to order the transcript.
5 Otherwise, it's up to you. Okay?

6 MR. AYYADURAI: Thank you, Your Honor.

7 MR. HORNSTINE: Thank you, Your Honor.

8 THE COURT: Thank you very much. Good luck to all.
9 We will be in recess.

10 (Adjourned, 1:41 p.m.)
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1 CERTIFICATE OF OFFICIAL REPORTER

2

3 I, Kelly Mortellite, Registered Merit Reporter

4 and Certified Realtime Reporter, in and for the United States

5 District Court for the District of Massachusetts, do hereby

6 certify that the foregoing transcript is a true and correct

7 transcript of the stenographically reported proceedings held in

8 the above-entitled matter to the best of my skill and ability.

9 Dated this 4th day of November, 2020.

10

11 /s/ Kelly Mortellite

12 _____

13 Kelly Mortellite, RMR, CRR

14 Official Court Reporter

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